Part 107
Airport Security

This edition replaces the existing loose-leaf Part 107 and its changes.

This FAA publication of the basic Part 107, effective March 29, 1979, incorporates Amendments 107-1 through 107-6 with preambles.

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criminal violence and aircraft piracy.

FOR FURTHER INFORMATION CONTACT: Milford T. Conarroe, Ground Operations Security Division (ACS–300), Civil Aviation Security Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426–8768.

SUPPLEMENTARY INFORMATION:

I. GENERAL

Interested persons have been afforded an opportunity to participate in the making of this amendment by Notice of Proposed Rule Making No. 77–8 issued on June 10, 1977 (42 FR 30766; June 16, 1977). For the most part the proposals made in Notice 77–8 for amending Part 107, Airport Security, are adopted by this amendment.

This amendment changes Part 107 as follows:

1. Expands the security program content requirements.

2. Revises and makes more explicit the procedures for approval and amendment of a security program.

3. Adds procedures for notifying the FAA when changed security conditions require an amendment to a security program.

4. Revises and clarifies the requirement for law enforcement officers and adds standards for their training. (As will be noted, these standards are less burdensome than proposed, in that they provide for the use of either State or local standards.)

5. Adds procedures for requesting the use of Federal law enforcement officers.

6. Adds a prohibition against carrying a firearm, an explosive or an incendiary device, but, unlike the proposal, the prohibition is limited to sterile areas.

7. Adds a provision requiring the airport operator to make a record of certain law enforcement actions available to the FAA.

Due consideration has been given to all comments received in response to the Notice 77–8. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Approximately 250 comments here received in response to Notice 77–8. Over half of the responses were from individuals, most of whom commented on § 107.21, relating to the carriage of weapons on airports. Comments were received from: airport operators and authorities; elements of municipal, county, and State governments; agencies of the Federal government; and outdoor sports associations and related businesses. A number of comments were received from domestic and foreign air carriers and organizations representing the aviation industry. Comments were also provided by police and security organizations.

A number of comments were received that were beyond the scope of the notice. These have not been addressed in this preamble.

A small number of commenters stated that many of the proposals in Notice 77–8 had no legal basis because the Federal Aviation Act of 1958 (Act) gives the FAA authority to issue regulations protecting persons and property against acts of criminal violence and aircraft piracy aboard aircraft only. However, in adding Section 315, Screening of Passengers, and Section 316, Air Transportation Security, (49 U.S.C. 1356 and 1357) to the Act (Pub. L. 93–366, § 202, 88 Stat. 409 (1974)), the Congress articulated the FAA's authority in this area by requiring the Administrator to provide persons traveling in air transportation

prohibited articles. Some believed this rule would comply with the requirements of Section 316 if applied only to people in "sterile areas." These comments and others on proposed § 107.21, (Carriage of firearms, explosives, or incendiary devices) are discussed below.

B. Air Operations Area

Concerning the definition of Air Operations Area (AOA) contained in § 107.1(b)(2), one commenter stated that helicopter operations areas should be included in the definition and another wanted to include general aviation operations. Conversely, others would exclude from the definition general aviation areas and areas under the exclusive control of Part 121 and 129 air carriers.

The FAA considers it to be more efficient for security programs to be based upon the security needs of an entire, specifically-defined area, rather than individual elements within that area. Therefore, all operations occurring within an area "designed and used for the landing, taking off, and surface maneuvering of airplanes" (including helicopter and general aviation operations) are part of the AOA. Areas that are used exclusively by helicopters are not included in the definition of an AOA because they do not pose a sufficient threat to air carrier operations subject to § 121.538.

An air carrier may limit its responsibility within an AOA to an "exclusive area' under Part 107, as adopted, for which the carrier exercises exclusive security responsibility in accordance with a written agreement between it and the airport operator.

C. Law Enforcement Officer

1. Warrantless Arrests

Proposed § 107.3(b)(3) would have defined a law enforcement officer (LEO) as an individual who is, among other things, authorized to arrest for the violation, either in or out of the officer's presence, of any criminal law of the State and local jurisdictions in which the airport is located. With regard to this part of the definition the Criminal Division of the Department of Justice pointed out that many police officers of State and local jurisdictions do not have authority, without a warrant, to arrest for misdemeanors not committed in their presence. The Department of Justice recommended striking the phrase "either in or out of his presence" from the definition so as to conform it to the arrest authority ordinarily possessed by law enforcement officers for misdemeanor offenses.

The FAA recognizes that arrest power is frequently limited as between misdemeanors and felonies, in that police officers often do not have authority, without a warrant, to arrest for misdemeanors committed outside their presence. Upon further consideration, the FAA has determined that it is not essential that officers have authority to arrest for misdemeanors committed outside their presence. Therefore, the LEO provisions, as adopted, require only that an LEO have authority to arrest with or without a warrant: (1) for a crime committed in the officer's presence, and (2) for a felony, when the officer has reason to believe that the suspect has committed it.

2. Scope of Authority

Some commenters also believed that a limited authority to enforce only statutes relating to aviation security would be adequate for officers supporting security programs. A few were of the opinion that Federally-mandated "guards" had no reason to enforce State or local laws. Authority to arrest for violations of the criminal law of the State and local jurisdiction in which the airport is located is necessary to provide the level of law enforcement contemplated by Section 316 of the Act, "adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy." It should be noted that locally deputized LEOs need not have the authority to arrest for Federal offenses. The majority of enabling State statutes and local ordinances provide authority to the deputized persons to arrest for both local and Federal offenses; however, a few States do not.

piracy demand it.

In this amendment, all the requirements that must be met for a person to be used as an LEO, including those in proposed § 107.1(b)(3), have been placed in § 107.17. As adopted, § 107.1(b)(4) defines a law enforcement officer as "an individual who meets the requirements of § 107.17."

D. Security Program Generally

1. Degree of Security

Some commenters mistakenly believed that new § 107.3(a)(1) calls for absolute security when it requires that the airport operator adopt and carry out a security program that "provides for the safety of persons and property traveling in air transportation against acts of criminal violence and aircraft piracy." The rule does not require the airport operator to go to unreasonable extremes to meet all possible security threats.

2. Revision of Security Programs

One commenter was concerned that the proposed revisions would require every existing security program to be rewritten. Although certain new requirements in Part 107, including training provisions, may call for an amendment to security programs, no other substantial revisions will be necessary if the program otherwise meets § 107.3(a)(1).

E. Security Program Contents

1. Necessity of Requirements

A number of commenters felt that the requirements in § 107.3(b), as to the content of the security program, would result in a vast increase in the amount of information required in the security program. They described these requirements as unnecessary, bureaucratic and burdensome, particularly on smaller aircraft with limited staffs and resources.

Many of the requirements of new § 107.3(b) are already met in security programs which were submitted under the current § 107.3. The requirements added to new § 107.3(b) are necessary to ensure the effectiveness of each security program in accordance with Section 316. Since most of the requirements in new § 107.3(b) are contained in existing security programs, the increase in overall workload in administering the program will not be significantly increased. In addition, standards for complying with the new requirements are readily available, which will lessen any additional workload. As a result of these factors, the new program should not be burdensome.

2. Description of the AOA

Some commenters were convinced that listing the dimensions of the AOAs serves no purpose, particularly if the areas are graphically illustrated. Others objected to the listing of areas adjacent to the AOAs unless the areas were specified by type in the rule or determined solely by the airport operator, and were limited to areas which posed a genuine threat of hijacking.

It is necessary for the airport operator to describe the areas over which it proposes to maintain security so that the FAA can determine the adequacy of the security program and approve it. Specific dimensions are necessary in order for the AOA to be precisely described and a graphic description may not be sufficient for this purpose. In addition to these dimensions, it is necessary for the AOA to include pertinent features, such as terrain and barrier composition.

The only areas other than AOAs that need to be identified in security programs in accordance with § 107.3(b)(2) are those that clearly present a danger to persons and property in the AOAs.

A number of commenters objected to requiring the description of alternate emergency procedures, as too broad, too narrow, or not needed. Section 107.3(b)(6) does not require airport operators to develop alternate security procedures to be used during emergencies and other unusual conditions. These procedures must be included in the security program only if the airport operator has developed them. Section 107.3(b)(6), as adopted, clarifies this requirement. It should be noted that this section is intended to complement, not duplicate, the requirement in § 139.55 for an airport emergency plan.

5. Implementing Documents

Commenters also objected to the requirement that implementing documents be included in the security program. proposed § 107.3(b)(8) does not require airport operators to include all implementing documents in their security programs. Rather, it allows them to avoid duplication by appending to the security program already existing documents which contain the information required by § 107.3(b), without having to restate the information elsewhere in the program. This provision has been deleted and a new paragraph (c) has been added to § 107.3 to make this clear.

F. Security Program Availability

With respect to the availability of the security program, as provided in proposed paragraphs (c) and (d) of § 107.3 (adopted as paragraphs (d) and (e)) one commenter would have the security program available to all air carriers served by the airport and another would have it available to all FAA personnel assigned to inspect the airport One commenter stated that airport operators already restrict security program information, whereas another felt that the information should be made available to all airport users. A few believed that the provisions conflict with the Freedom of information Act and the Executive Orders regarding security classifications.

Under paragraph (e) the airport security program is available only to those persons who have an operational need-to-know. The thrust of paragraphs (d) and (e) is to ensure that a copy of the security program is maintained and that it is made available to those inspectors who must monitor its implementation. The airport security program contains sensitive information of inestimable value to those who would commit offenses against civil aviation. In recognition of this fact, the Congress provided, in Section 916 of the Act, for the Administrator to protect that type of information by prohibiting disclosure if it would be "detrimental to the safety of persons traveling in air transportation." Congress specified that disclosure would not be required, notwithstanding any provision of the Freedom of information Act that would otherwise be applicable. Moreover, these provisions are not contrary to any Executive Order applying to national security. Therefore, under paragraph (e), the airport operator must restrict access to its security program to those who have an operational need-to-know.

G. Changed Conditions Affecting Security

With respect to § 107.7, which contains the procedures to be followed if there is a change in conditions on the airport which affects security, one commenter requested clarification as to who determiner when a security program becomes inadequate. Section 107.7 requires the airport operator to make the initial determination as to the program's continued adequacy after a change in condition occurs. This determination would be subject to FAA review.

H. Amendment of Security Program by Airport Operator

1. Field Office Involvement

With respect to the procedures in § 107.9 for amending security programs by airport operators, one commenter believed that they derogate the Air Transportation Security Field Office's responsibility in favor of the Regional Office. Another felt that the Regional Director should be able to modify proposed amendments. Although new § 107.9 provides specific procedures for submission of requests for amendment

3. Regional Director Approval

One commenter wanted the failure of the Regional Director to notify the airport operator in writing of approval or disapproval of the amendment to constitute approval. The FAA believes under most circumstances, 15 days should be sufficient for approval or disapproval by the Regional Director. Every effort will be made, including close cooperation with the airport operator, to ensure that a decision is made within this time period. However, it would not be in the public interest to provide for automatic approval after a specific time on matters dealing with aviation safety.

I. Amendment to Security Program by FAA

Concerning amendments to security programs by the FAA under § 107.11, one commenter felt that the Administrator should approve all amendments for the purpose of standardization. A small number of commenters were of the opinion that airport operators should be granted the same period for response as the Administrator under § 107.9, i.e., 30 days instead of seven.

The FAA believes that, since security programs are approved by the Regional Director, the Director should have the authority to amend these programs under ordinary circumstances. Complete standardization is neither possible nor desirable, because airports have security problems of an individual character. However, to the extent that uniformity is possible, it will be effected through FAA security policy.

The seven-day period for response to amendments proposed by the FAA has been in use as a minimum time period for over five years without any known problem. However, after consideration of the comments, the FAA agrees that a minimum response period of 30 days would be more reasonable. Therefore, the section, as adopted, has been changed to provide for this response period.

J. Security of Air Operations Areas

1. Airport Tenant Responsibility

A number of commenters noted that the provisions of proposed § 107.13 would eliminate the exceptions contained in current §§ 107.3(a)(2)(i)(d), 107.9(b), and 107.11(b)(2). These exceptions relieve the airport operator of the responsibility for controlling unauthorized access to, and requiring personal and vehicle identification for, AOAs that are exclusively occupied or controlled by an air carrier required to have a security program under § 121.538.

Several commenters argued that the change would give responsibility to airport operators for areas over which they might exercise little or no control. They referred to the provisions of long term lease arrangements or other legal restrictions, and asserted that airport operators would have no power to demand compliance. Others contended that airport operators are not economically or physically capable of exercising this responsibility. Some commenters argued that each tenant has responsibility, or should be delegated responsibility, for security in its own leased area. A few felt that there would be "confusion and conflict."

After consideration of these comments, the FAA has determined that the airport operator should not be required to share the responsibility for control of persons and ground vehicles entering, and moving within, an air carrier's exclusive area, and § 107.13, as adopted, provides this relief. An "exclusive area" is defined in new § 107.1(b)(3) as that part of an AOA for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25.

Although an area may be exclusively controlled or occupied by an air carrier, it can have an effect on the security of other areas of the airport. The closest coordination of security activities is needed

involved in its design and implementation.

It should be emphasized that nothing in § 107.13 prevents any airport tenant from accepting responsibility for the security of its leased area, or from carrying out its own security program. The tenant's program and the airport security program must be compatible; however, this can be achieved effectively by making appropriate sections of all tenants' security programs, including those of air carriers, a part of the airport security program.

2. Security Costs

Some airport commenters were concerned that they would have substantially increased costs because of the need for added patrols, guards, and other added measures. Air carrier commenters were also concerned because they anticipated that airport operators would pass their increased costs on to them, or require them to have costly security measures or facilities beyond those currently required by the air carrier's FAA approved security program.

The FAA believes that there is little likelihood of increased costs for either airport operators or airport tenants, including air carriers, as a result of § 107.13, as adopted. Where the security measures of tenants other than air carriers are already adequate, the provision does not require the airport operator to provide any additional security measures, and, the current practice of the acceptance of responsibility by these tenants may be continued. Second, it is not anticipated that any additional air carrier security measures will be needed where the level of security presently provided, pursuant to an FAA approved security program, is already acceptable. While modification of specific measures or procedures used by an air carrier at a particular airport may be necessary to achieve compatibility with the airport's security program, this should not result in a significant overall cost increase.

3. Access to AOAs

A small number of commenters on § 107.13 would substitute the word "controlling" for "preventing" in paragraph (a), which requires control of access to each AOA, including methods for "preventing" entry by unauthorized individuals and ground vehicles. Section 107.13(a) merely requires items described in the security program to be put into use. It does not impose absolute liability for unauthorized entry on the airport operator. Therefore the FAA believes the suggested substitution is unnecessary.

4. Unauthorized Persons and Vehicles

Two commenters requested a definition of "unauthorized persons and ground vehicles." For the purpose of § 107.13, an unauthorized person or ground vehicle is one whose entry is not approved by the airport operator or by the air carrier, for an exclusive area. Procedures for determining which persons and ground vehicles are authorized must be set out in the security program.

5. Means of Identification

Some commenters believed personal recognition as a means of identification is untrustworthy and recommended the use of identification media in all cases. Personal recognition is accepted by security experts and is used in the most secure areas, such as top secret facilities, as the most trustworthy system of identification. It is more useful than other systems of identification at small, low volume airports. The requirement of carrying identification media under all conditions has therefore been eliminated.

6. Clarifying Changes

For clarity, changes to certain language have been made in § 107.13. The word "contained" in the introductory clause in § 107.13 is replaced with the word "described". In paragraph (a) the words "or attempted penetration" have been added.

New § 107.15 allows airport operators to adopt, with FAA approval, the most efficient system of law enforcement support to meet the individual needs of the vast variety of airports and conditions. The Federal Aviation Act of 1958, as amended, requires, and experience at United States airports demonstrates the need for, law enforcement presence. That same experience and the experience at airports in other countries indicates that the specific form of LEO presence should vary depending on a number of factors including the volume of passenger traffic and the configuration of the terminal screening point.

In the preamble of NPRM 77–8, the FAA suggested one minute as the maximum permissible time under the current conditions. It is not possible to specify a minimum response time in the regulation, because it is necessary to evaluate the individual characteristics of the airport and the specific capability of the support system being proposed. Minimum response time for emergency vehicles under Part 139 should not be compared with those for security threats since the distances involved and the nature of the response are not the same.

2. Flexible Response System

Other commenters felt that the time-tested deterrent of the visible presence of an officer at the screening point and the protection provided to screening personnel and passengers by "front line" physical presence could not be provided by a flexible response system. A few contended that a flexible response system lacked the capability to interdict hijackers, terrorists, and other persons threatening criminal violence.

It should be emphasized that not all airports have configurations that will permit a flexible system of LEO support in lieu of stationing an LEO at each screening point. Moreover, even at an airport that lends itself to a flexible system, some screening points may still require that an LEO be stationed at the screening point. In addition, LEO visibility does have an important deterrent effect and must be considered in the development of any support system in which the LEO is not physically located at the screening point.

3. Legal Objections

In its comments the Criminal Division of the Department of Justice (DOJ) took the position that the Congress, in enacting Section 316 of the Act, endorsed the LEO's presence at the screening point as prescribed in § 107.4, which had already been adopted. It suggested that, in view of this and the recent history of the effectiveness of the LEO's presence at the screening point, the rule should require a provision in security programs for law enforcement presence at the screening point as well as other airport areas requiring that presence.

The DOJ indicated that "presence" could contemplate an LEO patrolling in the immediate area of the screening point, but that proposed § 107.15 contains very broad standards which may not provide for a quick law enforcement response. For this reason, it suggested that the rule provide that the response not fall below a minimum interval of time, arguing that the LEO cannot be "present" at the screening point within the ordinary meaning of the word if the response time to the screening point is greater than one minute. In addition, the DOJ contended that because the regulation is so broadly structured and because the physical designs of the nation's airports, as well as the security devices and methods to be used at each of those airports, could vary greatly, a subjective determination by the FAA would be required in each instance to determine whether or not each individual airport operator was in compliance.

The FAA does not agree with the DOJ's position that Section 316, in effect, requires the presence of a LEO at the screening point in every case. The FAA recognizes that the Congress, in enacting Section 316, statutorily endorsed the security policies and procedures of the FAA that were in effect at the nation's airports at the time. However, although it is clear that the Congress intended that the level of aviation security be maintained and that security programs be uniformly effective, it chose not to specifically require the LEO to be physically located at the screening point. Instead it provided that

of its potential effectiveness and a determination of the level of security provided. Moreover, from the inception of this program in 1973, all airport security programs, including those providing for law enforcement support, have been approved on an individual basis predicated on an evaluation of the particular system. For this reason, the FAA does not anticipate any difficulty in determining whether a program provides for adequate law enforcement visibility and for an effective response to each passenger screening station.

4. Screening Process

A few commenters also advocated the concept of one person carrying out both the screening process and the law enforcement functions at certain small airports. The FAA has conducted tests of systems that would allow the use of one person to carry out both the screening process and the law enforcement functions. These tests have shown that these systems can provide adequate security, and they are being authorized by the Administrator where appropriate.

L. Cost of Law Enforcement Support

Generally, all the commenters on proposed § 107.15(c), which would require the airport operator to provide law enforcement officers to support passenger screening systems required by Part 129, were concerted with the cost of, and the payment for, this service. The principles of comity and reciprocity were advanced by some as reasons for requiring the United States Government to bear all the costs involved. Others believed that the foreign air carriers should pay for their own security in the United States.

Meeting the costs of compensation for law enforcement services is an economic issue requiring resolution by the airport operators, the air carriers (both foreign and domestic) and the Civil Aeronautics Board. However, the United States' position has been that security is a service which should be paid for by the recipient of that service through the passenger fare structure, as are other safety-related operating costs incurred by the air carrier. Therefore, the cost of law enforcement support for passenger screening which is charged to the air carrier by the airport operator can he expected to be passed on to the passenger.

M. Law Enforcement Officers

1. Uniforms

There were several comments concerning the requirement in § 107.17(a)(2) that LEOs be in uniform. Two commenters felt that the police administrator (or an equal) should prescribe dress for officers, since a uniform might not be advantageous under all circumstances. One commenter remarked that some off-duty policemen, who might be used as airport LEOs, are prohibited from wearing their uniforms by departmental regulations.

The FAA believes uniforms are essential for public recognition. Moreover, where the flexible response concept is adopted with officers patrolling in the terminal rather than stationed at the screening point, there is an even greater need for the LEO to be immediately recognizable as a police officer, both by the public and by fellow officers. The design and style of the uniform will remain the prerogative of the responsible agency; however, the uniform must be one that can be easily recognized by the traveling public as a police uniform.

2. Training Programs

A few commenters applauded the FAA for setting high standards for training programs. Others noted that, as proposed, the standards were unnecessarily stringent and would require the replacement of many security personnel at a greatly increased and unjustified cost. A large number of the commenters

FAA will work with the airport operator to tailor training requirements to the airport's needs.

Private law enforcement personnel have always been acceptable and nothing in this rule is designed to preclude their use. However, standards required for the State or local police must also be met by private law enforcement officers.

N. Carriage of Firearms, Explosives and Incendiary Devices

1. General Comments

Most of the commenters to Notice 77–8 made reference to proposed § 107.21 which would have provided that no person on an airport may have any firearm, explosive, or incendiary device, on or about that individual's person or property in violation of any applicable State or local law. A majority of these commenters expressed views on no other section.

Commenters in opposition to the proposal believed that the rule was unnecessary, arguing that local laws are adequate to cope with the existing situation. Many of the commenters noted that the wide variance in the weapons laws could lead to an unacceptable lack of uniformity. Others felt that passengers would be in peril of many local laws both existing and those which might be enacted. Some critics pointed out that, although hijackings in the United States have declined, this proposal expanded the FAA role, not only to the terminal area, but to the entire airport. These critics felt that the rule would do nothing to stop hijacking while it would infringe on the rights of persons who may or may not be in air transportation as defined in the Act. In the same vein, they were of the opinion that if the rule were not restricted to the area between the airplane and the screening point, the provision would be unrealistic, repressive, and lead to "sterile" airports.

A number of commenters endorsed the objectives of this section, but argued that it could be redrafted to make it more realistic. Most of these commenters suggested that the rule be modified to take effect between the screening point and the aircraft.

The FAA agrees that the only place on the airport where, as a practical matter, illegal firearms, explosives, or incendiary devices in a person's possession are likely to be discovered is at the passenger screening point. Further, should a weapon be found at a point on the airport other than the screening point or within a sterile area, it would remain subject to any local laws prohibiting or limiting the carriage of weapons. Modifying the rule to use the screening point and sterile area would allow the elimination of the reference to local laws in the rule.

For these reasons, the FAA has modified this section by prohibiting unauthorized carriage of firearms, explosives, or incendiary devices by persons in or entering sterile areas or presenting themselves for inspection at established passenger screening points. It should be noted that the rule does not prohibit the legal carriage of firearms for sporting or other purposes when those firearms are not accessible to unauthorized persons in a sterile area. It also specifies those persons to whom it does not apply because of their need to carry a firearm it, the performance of their duty.

2. Constitutional Objections

As already noted, a small number of commenters objected to proposed §§ 107.1(a)(3) and 107.21 as unconstitutional, and as an unjustified extension of Section 316 of the Act. One implied that the proposal violated Article Four, Sections One and Two, the full faith and credit clause and the privileges and immunities clause. Another commenter asserted that the proposal was an "inappropriate impediment" to interstate commerce and, therefore, unconstitutional under Article One, Section Eight, the commerce clause. Finally, some commenters contended that the proposal violated the Second-Amendment right of the people to keep and bear arms and violated a general right to self-protection.

O. Records

In response to the record requirements of § 107.23, a few commenters said they did not oppose the requirement as long as requests are restricted to records which are reasonably available, pertain to the immediate disposition of detainees, and apply only to aviation security matters. Others felt that the FAA should generate its own records or compensate airport operators for maintaining them. A few believed there was no cost-benefit to this provision. A small number stated that the proposal duplicated air carrier responsibilities and suggested that the burden should either rest on the air carriers entirely or be completely eliminated.

Accurate information relating to the operation of the civil aviation security program is essential for the evaluation of its effectiveness, for determining its future direction, and for meeting the Congressional requirement for semiannual reports in Section 315 of the Act. The FAA believes that the airport operator is best qualified to ensure that this information is maintained and made available.

As adopted by this amendment, § 107.23 will become effective 30 days after notice has been published in the Federal Register that the requirements of that section have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Adoption of the Amendment

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is revised effective March 29, 1979.

Compliance with § 107.23 is not required until 30 days after a notice of approval of the requirements of that section by the Office of Management and Budget is published in the Federal Register.*

AUTHORITY: (Secs. 313, 315, 316, and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, and 1421); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Amendment 107–1

Airplane and Airport Operator Security

Adopted: January 12, 1981 **Effective: September 11, 1981**

(Published in 46 FR 3782, January 15, 1981)

SUMMARY: These amendments revise and consolidate security regulations for scheduled passenger and public charter operations in a new Part of the Federal Aviation Regulations and extend those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. The consolidation facilitates public access to aviation security regulations. These changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

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*A notice of approval by the Office of Management and Budget of the recordkeeping and reporting requirements of § 107.23 was published in the Federal Register on February 13, 1979 (44 FR 9744). The notice made that section effective March 29, 1979.

Part 108 and the revisions to Parts 107, 121, 129, and 135. Due consideration has been given to all matters presented. In response to comments received and after further study by the FAA, a number of changes are reflected in the rule as adopted.

Background

Since their inception in 1972, FAA security regulations have been designed to meet threats of hijacking and other crimes against the specific kinds of aircraft operations that have proven to be most attractive to the potential hijacker or saboteur. For the most part these operations have involved large transport type airplanes with scheduled departure times, and generally have been conducted by air carriers under Certificates of Public Convenience and Necessity (CPCN) and other limited economic authority issued by the Civil Aeronautics Board (CAB), as well as by certain wholly intrastate operators who are not air carriers. Operating rules for these operators are set out in Part 121 (14 CFR Part 121) and, for this reason, FAA security regulations were initially placed in that Part.

Scheduled operations with large airplanes also have been conducted under § 135.2 of Part 135 (14 CFR Part 135). Security for these operations has been achieved through voluntary compliance with requirements similar to those in Part 121; however, the number of these operations is increasing.

Recently, and in particular since the passage of the Airline Deregulation Act of 1978 (Deregulation Act), the CAB has liberalized its policies and has granted broad authority to conduct scheduled operations with large aircraft. There now are numerous air carriers referred to in the Deregulation Act as "commuters" operating under Part 135 with authority to conduct operations similar to those that were previously conducted only by CPCN holders under Part 121. While CPCN holders are being allowed to discontinue service at different terminals, commuter air carriers are gaining these terminal and route authorizations. As a result, commuter air carriers are now using identical aircraft in scheduled and public charter operations formerly used only by CPCN holders. These airplanes are being operated over routes formerly served by CPCN holders, and the operations are conducted without being subject to full FAA security requirements.

The Deregulation Act carries with it a mandate that there be no diminution in safety in situations where commuter carriers provide substitute service on routes previously served by route carriers. Section 33(c)(3) of the Deregulation Act requires the FAA to "impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under Section 401 of this title."

The Proposal

To ensure consistent application of FAA's security rules and to achieve the necessary level of security, Notice 79–17 proposed security requirements based upon airplane complexity instead of CAB authorizations. The proposal called for multilevel security requirements to be equally applicable to all scheduled and public charter passenger operations conducted by air carriers and other FAA certificate holders. The FAA certificate holder would have been required to meet the full security requirements that have been set out in Part 121, including an approved screening system, for operations conducted in airplanes with a seating configuration of 20 or more passenger seats. For operations conducted in airplanes configured for less than 20 passenger seats, the certificate holder would have been subject only to minimal security requirements, including passenger and shipper identification, airplane security, and arrangements for law enforcement response when needed. The proposal also would have retained the existing requirement in Part 135 for crewmember antihijack training.

A number of changes have been made in the final rules, as discussed in this preamble. A table is provided for comparing the major provisions of the proposed rule and the final amendments. It is to assist in understanding the changes that have been made and should not be relied upon as a complete statement of the amendments.

	forcement presence must be implemented only when the FAA identifies a security threat or passengers have uncontrolled access to a sterile area.
more than 60	Full security program must be adopted and implemented, including screening of all passengers, law enforcement presence, and other significant safeguards.

Comments

Approximately 320 public comments were received in response to Notice 79–17. Nearly all of the commenters were against the proposal. The major objections were the cost of implementing the security requirements and the absence of any threat that justified extending screening and other security requirements to commuter operations. The commenters argued that the proposal would place an undue hardship on small communities and inhibit industry growth by causing commuters to avoid use of larger airplanes in order to gain advantage of the minimal security requirements for airplanes with less than 20 passenger seats.

Economic Study

In analyzing financial data provided by the commenters, the security costs per passenger enplanement were found to vary so much that the FAA decided that further economic study was necessary. A sample of typical airports was examined to determine what the actual costs would be to implement the proposed requirements. The results of this small sampling indicated that a comprehensive indepth cost study was needed.

This indepth study identified potentially affected airplane operators (25) and airports (20). The personnel of FAA regional security divisions completed structured interview forms for each potentially affected airline station (90) and for each airport. This information was collected and analyzed by the FAA's Office of Aviation Policy and Plans; and in many cases followup discussions were held with airline and airport personnel. The final regulatory evaluation that resulted from this study is available in the public docket for this rulemaking action.

The study indicates that the FAA estimated costs provided in Notice 79–17 are generally accurate when considered against the total projected enplanements. However, when viewed for a particular airport, or for a particular flight, costs might be unreasonably high because of the limited enplanements at that airport or for that flight.

Considerable reduction in the cost impact of this final rule has been effected through the changes in the proposal. While adoption of Notice 79–17 could have resulted in an estimated maximum annual operating cost of $8.80 million and maximum capital investments of $5.30 million (for airplane operators) and $.36 million (for airports), the maximum annual operating cost for the final rule will not exceed $3.15 million and no capital investment will be necessary. These changes and their economic impact are discussed below.

Security Threat

The increased security threat to the commuter industry that was expected to result from implementation of the Deregulation Act has not materialized. Only one attempted hijacking of a commuter-operated airplane has occurred since the Deregulation Act was implemented. This attempt was thwarted by skillful FBI negotiations resulting in apprehension of the hijacker.

While the threat of air piracy and sabotage exists for all levels of air transportation, the historical record clearly establishes that the threat is very serious for some levels and less serious for others. Although all sizes of aircraft have been subjected to hijackings, the most severe threat has been against the larger, longer-range, jet airplanes in scheduled passenger operations. Typically these airplanes have more than 60 passenger seats, the smallest being the BAC–111, which may be configured for as few as 65 passenger seats, and the more commonly used DC–9, which is typically configured for approximately

security program.

For operations with airplanes having a passenger seating configuration of more than 30 but less than 61 seats, a full security program need not be implemented. A full program for these operations will have to be implemented only if the FAA notifies the airplane operator that a security threat exists with respect to a particular operation or set of operations.

While the frequency and extent of these threats cannot be predicted, the FAA expects that this contingency seldom will be invoked. If it is, it will probably not involve all airplane operators or all points served by a single operator, nor would all precautions have to be taken in every contingency.

Antihijack security training will continue to be required for all crewmembers of FAA certificate holders operating under Part 121 or Part 135. In addition, throughout Part 108 and the changes to Part 107 and § 129.25 of this chapter, the term ''airplane'' instead of ''aircraft'' is used since threatened operations have only involved airplanes and no other aircraft.

Airplane Operator Security Requirements

None of the comments suggest, nor does FAA intend, lessening in any way the current security requirements for U.S. or foreign air carriers utilizing airplanes configured for more than 60 passenger seats or for U.S. airports presently served by these carriers on a regular basis. To ensure that passengers in scheduled or public charter operations with these airplanes benefit from a degree of security commensurate with the existing threat, the rule, as adopted, continues to require the implementation of a full security program for these operations.

For airplanes with a passenger seating configuration of less than 61 seats, the larger the airplane, the more attractive it can be expected to be for the potential hijacker. The great majority of airplanes currently used by commuters are of less than 31 seat configuration. However, a number of larger airplanes are now in production or ''on the drawing board'' to serve the commuter airline market. The larger airplanes have a greater stage length and fuel capacity and carry many more passengers than those in current use. As a result, potential hijackers are more apt to see them as containing more hostages and having the range to serve their purposes.

Additionally, the FAA's economic study generally reflects significant increases in security costs per passenger as the airplane capacity decreases. The study indicates that for the lower half of the spectrum (the 1- through 30-seat airplanes), the economic hardship far outweighs the security benefit derived from even the minimal security requirements proposed in Notice 79–17 for airplanes configured for less than 20 seats.

For these reasons, the FAA has determined that airplanes with a seating configuration of 31 through 60 should be treated differently from those with 30 or fewer seats. Part 108, as adopted, requires FAA certificate holders conducting scheduled passenger and public charter operations in 31- through 60-seat airplanes to continue to conduct security training for crews, as presently required by §§ 121.417 and 135.331. Further Part 108 and changes to Part 129 require the adoption of a comprehensive security program for operations with 31 through 60 seats comparable to that required for in operations with airplanes having more than 60 seats. However, the operator will normally only have to implement for 31- through 60-seat airplanes those portions of the program that call for (1) having procedures for contacting the law enforcement agency identified by the airport operator and arranging for response to an incident when needed; and (2) advising appropriate employees, including crewmembers, of the procedures and instructing them when and how to use them. If the operator also uses airplanes above 60 seats, a full security program must be implemented for these operations.

Each operator of 31- through 60-seat airplanes must be prepared to implement its full security program for all or part of its operations at a particular station or systemwide upon notification by the FAA that a threat exists. Such a threat would exist, for example, where operations in this category have

airport governed by Part 107, the airport operator is required to provide law enforcement support for that screening. When a carrier conducts operations from an airport not governed by Part 107 of this chapter and is required to use a screening system, the carrier continues to be required to provide law enforcement officers to support the screening system.

Access to Sterile Areas

To protect the security of sterile areas, this amendment provides that operators of airplanes of any seating configuration may not discharge scheduled or public charter passengers into a sterile area unless: (1) the passengers and their accessible items are properly screened by the airplane operator; or (2) their access is controlled through surveillance and escort procedures or through the screening procedures of another operator.

Thus, unscreened passengers may have access to a sterile area where the discharging operator has made a prior arrangement with another FAA certificate holder or foreign air carrier, or in some cases the airport operator, having responsibility for the sterile area either for escort of the deplaning passengers into, through, and out of the sterile area or for the screening of those passengers before entry. Without these arrangements, operators not otherwise required by Part 108 or 129 to screen their passengers who wish to deplane their passengers in a particular operation into a sterile area at a particular airport must adopt and implement all the provisions of an appropriate security program with respect to that passenger operation. This requires that: (1) 100 percent screening of the passengers and their accessible items be completed before the last departure; (2) the airplane be protected; and (3) procedures be used to prevent or deter the introduction of explosives and incendiaries into checked baggage and cargo for those flights.

This process currently is being followed by a number of air carriers operating under § 135.2. These air taxi and commuter operators, because of their desire to allow their passengers to have direct and uncontrolled access to a sterile area, have voluntarily elected to amend their operations specifications to adhere to the security requirements of § 121.538. With implementation of Part 108, this will no longer be necessary, and operators requiring direct uncontrolled access to sterile areas for their passengers will follow the security program procedures in § 108.25.

As a result of these amendments, certain FAA certificate holders that operate smaller airplanes and have been required to meet the security provisions of § 121.538 are no longer required to implement full security programs. Under § 108.5 these operators or other operators utilizing 1- through 60-seat airplanes may elect to continue to operate under a full security program in order to discharge passengers into a sterile area, or may elect to operate under a full or modified security program to meet passenger expectations, to fulfill company security policies, or for other reasons. However, when FAA approval is obtained for any security program, § 108.5 requires that the airplane operator carry out the provisions of that program. Operators utilizing smaller airplanes who use their own separate facilities at certain airports will now be able, at those airports, to operate without screening passengers or providing law enforcement presence. For these operators this rule may represent a considerable economic savings.

An Air Carrier Standard Security Program meeting the requirements of this rule is available for use by all certificate holders. This program, jointly developed by FAA and industry, has proven very effective in lessening the certificate holder's administrative burden. The FAA encourages adoption of the Air Carrier Standard Security Program to ensure uniform implementation and use of security procedures.

Airport Security Requirements

At U.S. airports regularly serving scheduled passenger operations of FAA certificate holders and foreign air carriers utilizing airplanes with more than 60 seats, this final rule requires the airport operator to adhere to the current provisions of Part 107.

If an airplane operator using airplanes with less than 61 passenger seats must adopt and carry out a full security program with a screening system, the airport operator must provide law enforcement support during all required passenger screening operations. The airport operator is required to submit to the FAA for approval a security program identifying the law enforcement support, the training received by law enforcement officers, and a description of the system for recording law enforcement actions taken in support of aviation security. These law enforcement support requirements are the only security requirements imposed on the airport operator for operations with airplanes configured for less than 61 passenger seats where screening is performed under a required security program.

Economic Evaluation

Assessment of the economic impact of these amendments indicates that certain airplane and airport operators not previously required to have a security program may incur some costs in connection with scheduled and public charter passenger operations with airplanes having a passenger seating configuration of 31 through 60 passenger seats. Some additional costs will occur for these operators if they must implement contingency procedures included in security programs because of a threat condition. Most, if not all, of the costs of meeting contingencies would be associated with personnel and would not involve investments in X-ray machines, metal detectors, and alterations to airport terminals as might have been the case if the proposal in Notice 79–17 had been adopted. If a threat situation occurs, the FAA will work closely with the affected parties to ensure adequate, efficient, and cost-effective implementation of contingency procedures.

The only other new cost resulting from this rule may occur when some operators of airplanes with less than 61 passenger seats desire to discharge passengers directly into a sterile area. No additional cost will occur to the many operators already voluntarily providing security for these operations through amendments to their operations specifications. Airplane operators that do not now provide this security, and who desire access to a sterile area, will incur new costs for providing the necessary security safeguards.

The economic assessment indicates that the final rule may have an impact on 11 Part 135 operators of airplanes seating 31 through 60 passengers at as many as 39 stations. Virtually all of this cost impact would occur if contingency procedures are implemented. Based on the FAA's analysis of the current threat, coupled with the historical record, airplane and airport operators will rarely, if ever, be required to take these heightened precautions and a threat necessitating such action would probably never involve all 11 carriers or 39 stations at a time.

However, in the unlikely event that all operators of 31- through 60-seat airplanes are required to implement contingency procedures at all stations for an entire year because of the greatest hijacking threat, the annual cost could be as high as $3.15 million. Whatever costs occur may be recovered through fare or temporary subsidy increases.

This $3.15 million maximum cost contrasts with the possible costs that would have resulted from the proposed rule. The FAA's evaluation indicates that it could have resulted in as much as $8.8 million in new annual operating costs for the affected airplane operators, $5.3 million in investments for security equipment and construction by airplane operators and $360,000 in airport improvements.

Because these amendments impose uniform security requirements on the basis of airplane size and the protection of sterile areas instead of the kind of FAA and CAB operating authority, some Part 121 operators will have an opportunity to reduce security costs at some stations. As is the current case, all Part 135 operators now screening voluntarily under an operations specifications amendment can elect to discontinue screening under this rule if they choose not to continue to have access to a sterile area. While the FAA cannot determine the exact amount of cost savings, it estimates the maximum possible annual operating cost savings of $13,720,526.

NOTE: The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Reference Amendment 107–1

Airplane and Airport Operator Security

Adopted: June 15, 1981 **Effective: September 11, 1981**

(Published in 46 FR 36053, July 13, 1981)

SUMMARY: This document prescribes the effective date for a new Part of the Federal Aviation Regulations that consolidates security regulations for scheduled passenger and public charter operations and extends those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. At the time this new Part was adopted, its reporting and recordkeeping requirements had not been approved by OMB, and the Part could not be made effective. That approval process has now been completed.

This document also corrects a reference in the words of issuance of Amendment 107–1.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sirkis, Regulatory Projects Branch, (AVS–24) Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, S.W. Washington, D.C. 20591; Telephone (202)755–8716.

SUPPLEMENTARY INFORMATION: On January 12, 1981, the FAA adopted amendments that added a new Part 108, Airplane Operator Security (46 FR 3782; January 15, 1981), and amended other associated security regulations. The new Part revises and consolidates aviation security regulations for scheduled passenger and public charter operations, and extends those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. The consolidation facilitates public access to aviation security regulations. The changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

Because new Part 108 contains reporting and recordkeeping requirements for which OMB approval is required, the effectivity of the new Part was delayed until April 1, 1981, or 60 days after OMB approval, whichever would be later. On April 29, 1981, OMB approved these requirements. A copy of the approval may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, No. 19726, 800 Independence Avenue, SW, Washington, DC 20591.

Accordingly, this notice prescribes the necessary effective date and, except as noted, provides the 60-day notice referred to at the time these amendments were adopted.

In order to relieve certain airplane operators immediately of an unnecessary financial burden, this notice permits compliance without delay with new Part 108. When issuing Part 108, the FAA considered the economic burden that could be imposed on the small airplane operators and the fact that the hijacking threat directed against commuters has not significantly increased. It was determined that the implementation of a full security program should only be required for scheduled and public charter operations with airplanes having a passenger-seating configuration of more than 60 seats and for operations providing deplaned passengers access to a sterile area at the next landing when the access is not controlled by

Section 107.7 requires the airport operator to notify the FAA, and appropriately amend its security program, whenever certain changed security conditions occur. Specifically, § 107.7(a) (4) provides that this action must be taken when the law enforcement support, as described in the airport operator's security program, is not adequate to comply with § 107.15. Amendment 107–1 was intended to add references in § 107.7(a) (4) to new security program requirements. However, because that provision is misnumbered in the current bound version of the Code of Federal Regulations (14 CFR § 107.7), the amending language erroneously referred to it as § 107.7(a) (3). This amendment corrects the amending language to refer to § 107.7(a) (4). The Code of Federal Regulations will be corrected when it is next published in bound form.

Effective Date and Correction

Accordingly, Amendments No. 107–1, 108 (New), 121–167, 129–11, and 135–10 will be effective September 11, 1981, or, for a certificate holder to which new Part 108 would apply, on the date that the certificate holder notifies the Director of Civil Aviation Security of its intention to comply with the Part, whichever date is earlier. The words of issuance of Amendment 107–1 are corrected to amend § 107.7(a)(4), instead of § 107.7(a)(3), by inserting the phrase ", (f)(1), or (g)(1)" after the phrase "§ 107.3(b)(7)".

(Secs. 313, 315, 316, 317, 601–610 of the Federal Aviation Act of 1958(49 U.S.C. 1354(a), 1356, 1357, 1358, 1421–1430); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE: The FAA has determined that this document pertains to a rulemaking action which is not a major regulation under Executive Order 12291; that it is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and that, under the criteria of the Regulatory Flexibility Act, it will not have a significant impact on a substantial number of small entities. In addition, the FAA has determined that, while a regulatory evaluation was prepared for the final rule, the expected further impact of this notice and correction is so minimal that it does not require an evaluation.

Amendment 107–2

Miscellaneous Amendments

Adopted: February 26, 1982 **Effective: April 28, 1982**

(Published in 47 FR 13312, March 29, 1982)

SUMMARY: These amendments make a number of minor changes to the Federal Aviation Regulations (FAR). They amend certain Parts to change prerequisites required for flight tests and the experience necessary for an airline transport pilot certificate. They change the validity period for the written test for a flight engineer certificate. In addition, they amend certain sections of the FAR by changing the word aircraft to airplane. Part 45 of the FAR is amended to permit an approved parts manufacturer to refer, on a tag, to readily available information when it would be impractical to mark the required eligibility information on the tag. Part 91 of the FAR is amended to delete the list of purposes for which a special flight authorization for foreign civil aircraft may be issued. Other sections are amended for purposes of clarification or correction.

FOR FURTHER INFORMATION CONTACT: Mr. E. Wendell Owens Regulatory Review Branch (AVS–22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202)755–8714.

The following discussions are keyed to like-numbered proposals contained in Notice 80–23 (45 FR 80450; December 4, 1980).

Proposal 1. The proposal to amend § 21.197 to make Part 135 operators eligible for special flight permits with continuing authorizations was disposed of separately in Amendment 21–54 (46 FR 37876; July 23, 1981).

Proposal 2. This proposal would correct an incomplete listing of sections. The correct sections are listed in Appendix A, Section A23.1(a), as §§ 23.321 through 23.459. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

Proposals 3 and 9. Sections 23.305(a) and 25.305(a) contain parallel requirements for structural strength and deformation; however, these include differences in wording and punctuation from the corresponding statements contained in the similar, but correctly stated §§ 27.305(a) and 29.309(a). These proposals would correct §§ 23.305(a) and 25.305(a) by making them consistent with §§ 27.305(a) and 29.305(a). One commenter points out that the word "or" was erroneously inserted at the time CAR 6 and 7 were recodified to Parts 27 and 29 of the FAR. The commenter further states that §§ 23.305 and 25.305 are correctly stated, and that §§ 27.305(a) and 29.305(a)(which have the word "or" inserted) should be revised accordingly.

As originally written, the word "detrimental" was used to quantify the amount of permanent deformation and prohibit acceptance of a loading test which resulted in deforming the tested article to an extent that would degrade its structural charateristics. Insertion of a comma or a conjunction between "detrimental" and "premanent" would change the intended meaning. Inasmuch as the proposed change would only add to the error, the proposals to amend §§ 23.305 and 25.305 are withdrawn.

Proposal 4. This proposal would rearrange paragraphs (a)(1), (a)(2), and (a)(3) of § 23.441 to ensure that the correct tail load distribution is imposed for the flight condition. One commenter points out that the desired correct correlation between load specifying figures in Appendix B and the alternate load requirements of §§ 23.441(a), (b), and (c) could also be accomplished by leaving (a)(1), (a)(2), and (a)(3) in their present order while changing B6, B7, and B8 to B7, B6, and B8. Inasmuch as the interchange of the numbers 6 and 7 occurred initially when the prefix letter B was added in Amendment No. 23–7, August 13,1969, and because other printings of Part 23 use the order B7, B6, and B8, the FAA disagrees with the commenter. Accordingly, the proposal is adopted without substantive change.

Proposal 5. This proposal would amend § 23.472(f) to delete reference to § 23.725 and insert the reference to § 23.723(a) in its place. This proposal would permit drop tests other than the free drop tests, and would make the requirement consistent with corresponding sections of Parts 25, 27, and 29. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

Proposal 6. No comments were received on the proposal to insert the word "red" before the word "arcs" in § 23.1549(d), for consistency with § 25.1549(d). The proposal is adopted without substantive change.

Proposal 7. This proposal would correct a reference to § 23.201(h) in § 23.1587(a)(1). The reference to § 23.201(a) or (b) in § 23.1587(a)(1) is incorrect. Reference to § 23.201(a) as proposed in Notice 80–23 is also incorrect. Both references are for paragraphs dealing with control configurations. Section 23.201(c) deals with a maneuver as intended in § 25.1587(a)(1).

Two commenters suggest that the altitude loss information required by § 23.1587(a)(1) should be required for all airplanes regardless of whether or not they have independent controls. The FAA agrees and has amended § 23.1587(a)(1) to reference § 23.201(c) which applies to all airplanes regardless of their control configuration. The section is amended accordingly.

economic information on these regulations.

Another commenter expressed full support of the proposal. This proposal is intended to clarify the existing regulation and does not establish a new requirement for transport category airplanes. Accordingly, the proposal is adopted without substantive change.

Proposal 11. No comments were received concerning these proposed minor editorial changes. Accordingly, the proposal is adopted without substantive change.

Proposal 12. This proposal would amend § 29.807 to make it clear that all transport category aircraft must have ditching emergency exits whether or not ditching certification is requested.

A commenter states that helicopters not certified for ditching will probably capsize immediately when rotor lift is lost because of their high center of gravity and lack of lateral stabilizing appendages such as wings. This commenter also claims that, because of the additional factor that compartments are not usually water-tight, it is impossible to determine a waterline. The commenter recommends the proposal be cancelled.

Two commenters strongly object to this proposal on the basis that the extension of the transport airplane condition to a helicopter is illogical because of the unique characteristics of helicopters. The commenters point out that the FAA previously considered this question and agreed that the proposed requirement was inappropriate.

Since the time this question was previously considered, there has been no new evidence which would justify a change in rationale, nor has there been any new evidence pointing to a need for added rotorcraft ditching exit provisions. Accordingly, this proposal is withdrawn.

Proposal 13. This proposal would have made Part 43 internally consistent by amending § 43.4 to include Canadian persons authorized under § 43.17. Operations Review Program Notice No. 12 proposes changes to § 43.3. Accordingly, this proposal is withdrawn and will be acted upon as part of that review. Comments received in response to this proposal will be given full consideration in that action.

Proposal 14. Two comments were received in response to this proposal to revise the marking requirements of § 45.15 so that when it is impractical to mark the required eligibility information on the tag attached to a part or container, the tag may refer to a specific and readily available reference manual or catalog which contains the required information.

One comment was submitted by the industry Association that petitioned for this rule change. It found the wording of this proposal to be reasonable.

Another commenter believed that the original concept of Parts Manufacturer Approvals (PMA) was primarily based on the production of parts such as spark plugs, pistons, piston pins, etc., to be used as duplicate parts without a specific part number. These parts are, in fact, required to have a specific part number. Further, the PMA manufacturer is required to mark the parts (or tags) with parts replacement eligibility. It was not proposed to remove the requirement for this information from § 45.15; it was proposed to provide that, in those cases where it would not be practical to mark the required eligibility information on the tag, the tag may contain a reference to a readily available manual or catalog containing the required eligibility information.

Section 45.15 is adopted without substantive change.

Proposal 15. Section 61.39(h) has required that an applicant for an airline transport pilot certificate or an additional rating who does not wish to retake the required written examination must have been continuously employed since passing the written examination and be participating in a pilot training program. For the exception from the 24-month requirement to apply, a person had to have been employed by a carrier immediately (within 24 hours) after taking the written examination; a strike or furlough

One commenter responded in support of the proposal. The proposal is adopted as proposed.

Proposal 16. Section 61.155(d) has provided that a commercial pilot may credit toward the total flight time required for an airline transport pilot certificate any second-in-command time "in operations under Part 121." However, § 61.51(c)(3) provides that for meeting the requirements for a certificate or rating, a pilot may log as second-in-command time all flight time during which that pilot acts as second in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted. The intent of § 61.51(c)(3), when it was adopted, was that this rule should apply to the experience requirements for each kind of pilot certificate. However, at that time no change was made in § 61.155(d). Notice 80–23 proposed to eliminate the phrase "in operations under Part 121," so that all second-incommand time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155. No comments were received on this proposal.

The proposal is adopted and all second-in-command time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155(d).

Proposal 17. Section 63.35(d) has required continuous participation in a maintenance, flight engineer, or pilot training program of a Part 121 certificate holder for an applicant for a flight engineer certificate to be exempted from the 24-month validity period for the written examination. Similar to § 61.39, this section has been interpreted to mean that any break in employment, such as a strike or furlough, constitutes an interruption of continuous participation in a training program and prevents the exception from applying. The FAA has reevaluated this requirement and has determined that continuous participation in a training program is not essential. Currency in a certificate holder's training program for a flight crewmember or recency of experience for a mechanic employed by a certificate holder ensures knowledge retention better than continuous participation in a training program.

Notice 80–23 proposed to amend § 63.35(d) to apply the exception provision to a flight crewmember or mechanic who is employed by a certificate holder within the period ending 24 calendar months after the month in which the applicant passed the written examination, and whose training is current or meets the recent experience requirements for a mechanic under § 65.83. It also proposed to expand the rule to include employment by a commuter air carrier.

No comments were received on the proposal. It is adopted without substantive change.

Proposal 18. Notice 80–23 proposed to amend § 65.101 to allow formal training to be substituted for the practical experience now required for repairman certificate eligibility. One commenter agreed with the substance of the proposal, with the exception that completed formal training should have the prior approval of the Administrator instead of being reviewed for acceptability after completion.

Because of the diversity and uniqueness of training associated with repairman ratings, it would be impractical to establish national uniform training standards necessary for prior approval of training programs. Conversely, FAA certificated air agencies, aviation manufacturers, and air carriers are best able to establish that formal training which will qualify the repairmen they employ to perform or supervise the maintenance of aircraft or components at its facilities. The FAA can then review the training and determine if it is acceptable. This amendment will provide a logical alternative to the 18 months of practical experience formerly required for repairmen eligibility and still provide an equivalent level of competency. Accordingly, this proposal is adopted without substantive change.

Proposal 19. It was proposed to amend § 65.127(b) to provide that a parachute rigger need only have available suitable housing that is adequately heated, lighted, and ventilated for drying and airing parachutes. This section has required, in part, a compartment for hanging a parachute vertically for drying and airing. Since parachutes are now made of synthetic fabrics, a vertical or horizontal means for drying and airing parachutes is also acceptable. However, the housing must still be adequately heated, lighted, and ventilated.

for proposed § 91.28(c) to preclude any misunderstanding as to when CAB authority would be necessary.

In this regard the FAA agrees with the commenters and the CAB that the proposal was not clear relative to when CAB authority would be necessary. Accordingly, the FAA has amended the language of proposed § 91.28 to clarify when CAB authority would be necessary.

One commenter noted that, in the case of special flight authorizations for air shows (§ 91.28(b)(6)), the application procedure contained in proposed § 91.28(a) would no longer provide for applications to be made to the Regional Director of the FAA region in which the air show will take place. The commenter stated that the existing application procedure should be retained since it is economical and effective. The FAA agrees with this comment and has amended § 91.28(a) to reinstate this application procedure.

One commenter stated that it was not clear whether the Regional Director would have authority to issue special flight authorizations for extended periods of time; i.e., once justification had been established for an initial special flight authorization, there would be no benefit in repeating the procedure for each subsequent trip, as in the case of a Canadian amateur-built aircraft to participate at United States air shows. This comment was not considered since it was determined to be outside the scope of Notice 80–23.

Accordingly, this section has been amended consistent with public comments in the interest of clarification and adopted without substantive change.

Proposal 21. This proposal would have required all helicopters operating under IFR to use altimeters which have been tested for the altitudes at which operations are conducted. Operations Review Program Notice No. 12 proposes a number of changes to § 91.170. Accordingly, this proposal is withdrawn and will be acted upon as part of that review. Comments received in response to this proposal will be given full consideration in that action.

Proposal 22. This proposal would delete references to Part 103 in § 121.135(b)(23) and insert appropriate references to Title 49 of the CFR. Since this change was previously accomplished in Operations Review Amendment No. 9 (45 FR 46736), this proposal is withdrawn.

Proposal 23. This proposal would require the interphone system to be accessible for use at enough flight attendant stations so that all floor-level emergency exist in each passenger compartment are observable from one or more of those stations so equipped. Section 121.319(a) requires, in part, that airplanes with a seating capacity of more than 19 passengers must be equipped with a crewmember interphone system. Section 121.319(b)(5)(i) requires that for large turbojet-powered airplanes, the interphone system must be accessible for use at enough flight attendant stations so that all floor-level emergency exits in each passenger compartment are observable from one or more of those stations. From a security and operational viewpoint, if the floor-level exit is located within a galley, and the entryway to the galley is observable, this will satisfy the operational/security requirements and, therefore, it would be unnecessary to view the exit itself. No comments were received on this proposal. Accordingly, it is adopted without substantive change.

Proposals 24, 25, 27, and 28. Sections 121.385, 121.389, 121.695, and 121.697 contained inconsistencies in the use of the words "aircraft" and "airplanes." The proposals would replace the word "aircraft" with the word "airplane" where it appears in §§ 121.385(a), 121.389(a)(2), 121.695(a), and 121.697(a) and (d). These editorial corrections would make the language consistent with the applicable word definitions. No comments were received on these proposals. Accordingly, they are adopted without substantive change.

Proposal 26. This proposal would have amended § 121.585 to require a certificate holder to notify a passenger declaring a firearm in checked baggage of the definition of a "loaded" firearm. It further would have required a certificate holder to determine that ammunition is carried in accordance with the Hazardous Materials Regulations in Title 49 Parts 171, 172, and 173 of the CFR.

compliance with Part 129. This proposal would amend § 129.1 of the FAR to make Part 129 applicable to foreign air carriers who hold either a Section 402 permit or other appropriate economic authority, or an exemption issued by the CAB which requires compliance with that Part. No comments were received on this proposal. The phrase "conditioned upon the foreign air carrier compling with the requirements of the Part" is ambiguous since Part 129 applies regardless of CAB conditions shown on the economic authority to operate in the United States. Accordingly, this section has been amended and adopted without substantive change.

Proposals 31 and 32. These proposals were disposed of in Amendments 135–13 (46 FR 28301; May 26, 1981) and 135–15 (46 FR 30968; June 11, 1981).

Editorial Corrections

Amendments to §§ 107.13(a) and 121.575 were not proposed in Notice 80–23. They are editorial corrections which are necessary and resulted from new Part 108, Airplane Operator Security (46 FR 3782; February 15, 1981).

These amendments correct §§ 107.13 and 121.575 by inserting the appropriate reference to the new Part. No substantive change is made as a result of the corrections.

Adoption of the Amendment

Accordingly, Parts 23, 25, 45, 61, 63, 65, 91, 107, 121, and 129 of the Federal Aviation Regulations are amended effective April 28, 1982.

(Secs. 313(a), 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); sec. 6(c), Department of Transportation Act. (49 U.S.C. 1655(c)); and 14 CFR 11.49)

NOTE: The FAA has determined that these amendments reduce the regulatory burden on the flying public by relaxing certain regulations that govern prerequisites for flight tests, approved parts reference for manufacturers, and special flight authorization for foreign civil aircraft by prescribing only the minimum regulations deemed necessary for safety. The FAA's evaluation of the changes to Parts 23, 25, 45, 61, 63, 65, 91, 107, 121, and 129 indicates that the benefits will exceed the costs, primarily because the complexity and volume of regulatory material have been reduced. Further, proposals contained in the notice which have potential for placing a regulatory burden on the public have been removed. Therefore: (1) it has been determined that this is not a major regulation under Executive Order 12291; and (2) I certify that, under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantical number of small entities. In addition, the FAA has determined that these amendments are not significant under the Department of Transportation Regulatory Policies Procedures (44 FR 11034; February 26, 1979). The impact of this rulemaking is so minimal it does not require a final regulatory evaluation since most of the amendments are merely editorial corrections and clarifications and some have minimal relaxatory and beneficial economic impact.

Amendment 107–3

Airport and Airplane Operator Security Rules

Adopted: January 3, 1986 **Effective: January 10, 1986**

(Published in 51 FR 1350, January 10, 1986)

SUMMARY: This final rule makes a number of minor substantive and editorial changes in the airport and airplane operator security rules regarding the carrying of an explosive, an incendiary, or a deadly

5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Aviation Security Division (ACS–100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 426–8798.

SUPPLEMENTARY INFORMATION:

Comments Invited

These regulations are being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, Docket No. 24883, 800 Independence Avenue, S.W., Washington, D.C. 20591. All comments submitted will be available in the Rules Docket for examination by interested persons. This amendment may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24883." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulted in the torture and kidnapping of U.S. citizens and the murder of one U.S. citizen. It was one of the latest in a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe, the Middle East, and throughout the world during the 1980's. To combat this threat, the FAA undertook certain actions to protect U.S. civil aviation and U.S. citizens in designated areas and throughout the world.

On July 3, 1985, the FAA issued Amendment No. 108–2 (50 FR 27924; July 8, 1985) providing for the transportation of Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. The purpose of that rule is to ensure that Federal Air Marshals are used effectively and efficiently for those high-risk flights that the Federal Aviation Administrator determines should be protected.

On July 11, 1985, the FAA issued Amendment No. 108–3 (50 FR 28892; July 16, 1985) requiring each certificate holder to whom the airplane operator security rules apply to have individuals identified and trained as Security Coordinators for international and domestic flights, in accordance with its approved security program. It also required certificate holders to provide security training for all crewmembers to the extent necessary to prepare each crewmember to repsond adequately to various levels and types of threats.

This final rule is being issued to make a number of minor changes to Parts 107 and 108 of the Federal Aviation Regulations (FAR) that will provide consistency within the rules and ensure that they are given their intended effect.

To prevent such occurrences, Part 107 is being amended to add a new § 107.20 that provides that no person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area by a U.S. air carrier under § 108.9 or a foreign air carrier under § 129.25. Persons violating this prohibition would be subject to a civil penalty of $1,000 for each violation.

Deadly or Dangerous Weapon

Section 107.21 provides that, with certain exceptions, no person may have a firearm, an explosive, or an incendiary device on or about the individual's person or accessible property when presenting himself or herself for screening or when entering or in a sterile area. It states precisely the point at which a person may not have a prohibited item in his or her possession.

The prohibited items were intended to correspond to those which the certificate holder must keep out of the sterile area in accordance with Part 108 of the FAR and its approved security program. Section 108.9 requires the certificate holder to use the procedures in its security program to prevent or deter the carriage aboard its airplanes of any explosive, incendiary device, or "deadly or dangerous weapon." A similar provision in § 129.25 applies to foreign air carriers.

The FAA has determined that the term "firearm" in § 107.21 should be replaced with "deadly or dangerous weapon," in order to be consistent with the terminology that is used elsewhere in the security regulations. Accordingly, § 107.21 is being amended to prohibit passengers from presenting themselves for screening with a deadly or dangerous weapon accessible to them. The effect of this amendment will be to broaden the rule to prohibit certain items at the screening point in addition to firearms. They would include such items as mace and certain knives. The passenger, however, already is prohibited from carrying any deadly or dangerous weapon on board the aircraft under § 108.11.

Incendiary Devices

Parts 107 and 108 currently prohibit the possession of an incendiary device while passing through the screening point, in a sterile area, or aboard the airplane. An "incendiary device" is generally considered to be anything which can cause a fire by ignition. An incendiary, such as gasoline, whether or not a means of ignition is attached to it, has been considered an incendiary "device" for purposes of the rule because cigarette lighters and other ignition sources are readily available. To avoid too narrow an interpretation of the rule, "incendiary device" is being replaced by "incendiary" wherever the phrase appears in Part 107 and Part 108.

Applicability of Part 108

A number of provisions in Part 108 apply to passengers and to certain persons on airports. Section 108.11(a) and (b) prohibit the carriage of a deadly or dangerous weapon on or about the person of a passenger aboard an airplane unless certain conditions are met. This prohibition specifically applies to a certificate holder in the conduct of an operation with an airplane for which security screening is required by Part 108. The prohibition applies to passengers aboard airplanes for which screening is required and also to passengers on airplanes for which screening is not required. In the latter case, the rule does not apply to the certificate holder since it does not screen passengers.

Section 108.11(c) prohibits certificate holders from transporting, and passengers from tendering for transport, in checked baggage any explosive, incendiary device, or loaded firearm. An unloaded firearm may be tendered for transport and transported, if the conditions in § 108.11(d) are met.

Section 108.21 prescribes requirements for the carriage of passengers under the control of armed law enforcement escorts. In addition to requirements imposed on the certificate holder, paragraph (c) of the section requires the law enforcement officer at all times to accompany and keep under surveillance

have been replaced with § 108.11 when Part 108 was adopted.

Need for Immediate Adoption

These amendments are needed to ensure the overall effectiveness of the aviation security regulations in a time of heightened threat. The minor substantive changes conform to the general public understanding of the meaning and purpose of security screening requirements. The current behavior of the public and certificate holders already conforms to these changes. Other changes are of an editorial nature.

For these reasons, notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on these changes to the regulations. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication is being provided.

Economic Assessment

These are minor substantive and editorial amendments. They are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. For this reason, no economic impact is expected to result. In addition, the amendments would have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

CONCLUSION

These amendments are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs connected with the proposal, the FAA has determined that the expected impact on the amendment is so minimal that it does not warrant an evaluation.

The Amendment

Accordingly, Parts 107 and 108 of the Federal Aviation Regulations (14 CFR Parts 107 and 108) are amended effective January 10, 1986.

AUTHORITY: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

Amendment 107–4

Access to Secured Areas of Airports

Adopted: January 3, 1989 **Effective: February 8, 1989**

(Published in 54 FR 582, January 6, 1989)

SUMMARY: This rule establishes a requirement for certain airport operators to submit to the Director of Civil Aviation Security, for approval and inclusion in their approved security programs, amendments to ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and, also, to ensure that such access is denied immediately to individuals whose

Background

The Federal Aviation Administration's (FAA) Civil Aviation Security Program was initiated in 1973. Part 107 of the Federal Aviation Regulations was promulgated to provide a secure environment in which air carriers can operate. Airport operators are required by Part 107 to have an FAA-approved airport security program. The approved security program must describe the functions and procedures to control access to certain areas of the airport and to control movement of persons and vehicles within those areas. The Personnel Identification Procedures contained in airport security programs provide a means of control once an individual has gained access to a restricted area. The FAA is concerned that these procedures could allow an individual using forged, stolen, or noncurrent identification to compromise the secured areas. The FAA is also concerned that former employees could use their familiarity with airline and airport procedures to succeed in entering a secured area and possibly commit a criminal act on board an aircraft.

The December 7, 1987, tragedy involving Pacific Southwest Airlines (PSA) Flight 1771, in which 38 passengers and 5 crewmembers were killed after departing Los Angeles International Airport, highlighted FAA's interest in improving the control of access to secured areas of an airport. An airport area where access to aircraft and airport facilities is possible should be accessible only to an individual who is authorized to be in that area. These areas should be controlled carefully to prevent tampering with aircraft and airport facilities and to preclude tragic consequences.

The FAA accelerated its efforts to head off the type of situation potentially reflected by the crash of PSA Flight 1771 and to improve the level of security generally. This acceleration resulted in the promulgation of an emergency final rule amending the preboarding screening procedures contained in Parts 108 and 129 of the Federal Aviation Regulations (52 FR 48508; December 22, 1987). To complement the procedures required by that emergency regulation and to expand the performance standards of security systems at airports, on March 11, 1988, the FAA issued Notice of Proposed Rulemaking (Notice) No. 88–6 (53 FR 9094; March 18, 1988). That notice proposed that airport operators, whose airports met certain criteria, be required to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and also ensure that such access is denied immediately to individuals whose authority to have access changes. It further proposed that the program provide for a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. To provide this increased control of locations on the airport, the FAA proposed in Notice No. 88–6 the installation of a computer-controlled card access system. The notice also proposed that airport operators be allowed to install alternative systems which, in the Administrator's judgment, would have the same capabilities as the computer-card system and would provide an equivalent level of security.

Additionally, Notice No. 88–6 specifically stated that the proposal would supplement, not replace, the existing photo identification system required by an airport operator's approved security program. The continuous display of the individual identification in secured areas is necessary so that unauthorized individuals can be challenged in accordance with Section 107.13. However, the notice proposed that the airport operator be given the option of integrating the system proposed by Notice No. 88–6 with the photo identification system and issuing a single credential.

The anticipated capabilities of a computer-controlled card access system were discussed in Notice No. 88–6. In addition to being able to monitor each location where access to the secured area is permitted by means of a ''card reader'' linked to the control computer, the system would be designed to provide for unique coding for each card. The system would also be capable of performing other functions that can improve an airport's security profile including the ability to cause an alert when access is denied to a person who attempts to use an invalid card and to establish a log of the system's activity. The

additional time for implementation at locations that provide access to more remote locations on the airport.

Discussion of Comments

As of May 31, 1988, the FAA received 122 written comments in response to Notice No. 88–6 from organizations representing the aviation industry, air carriers, individuals, manufacturers, and airports. The majority of the commenters object to the proposal either in part or in its entirety. They believe the proposal to be premature and lacking in its evaluation of complex issues. Numerous commenters support the intent of the proposed rule but express concern because it lacked specificity about the requirements and because they made incorrect assumptions about the scope of the requirements. The following discussion is intended to address the comments and explain the FAA's response to the concerns identified in the 122 comments received through May 31, 1988. The FAA has reviewed and considered late-filed comments to determine if any new issues were raised or any significant, new factual information was provided.

Six commenters request a 60-day extension of the May 2, 1988, closing date for comments on Notice No. 88–6 including requests from the American Association of Airport Executives (AAAE), the Airport Operators Council International (AOCI), and the Regional Airline Association (RAA). A letter was also received from the Air Transport Association (ATA) in support of the AAAE and AOCI requests. They comment that, considering the magnitude of the issue, more time is needed to allow for wider distribution and discussion, to prepare additional information concerning the costs associated with the proposed system, and to allow maximum comments and facilitate an open exchange of ideas. The FAA denied the requests for extension. However, the FAA continued to consider late-filed comments beyond July 2, the date on which the requested extension period would have expired.

Twelve commenters are recommending that Notice No. 88–6 be withdrawn to allow time for the FAA, airport operators and tenants, and other interested parties to explore the total security problem that might exist at airports. At least three commenters are requesting a public hearing which they believe will allow them to air their concerns and expose pertinent issues thereby providing the FAA and the aviation community with necessary information. Ten commenters specifically request the FAA to conduct a study of the technology that is available regarding automated access control systems to determine the most appropriate system to accomplish the objective of the proposal. Several commenters, including the ATA and AAAE, recommend that the FAA conduct a pilot program at several airports to evaluate more realistically the issues involved in this rulemaking.

While worthy of merit under less compelling circumstances, the implementation of any of these recommendations would result in the postponement of a security measure intended to promote the safety of air transportation and therefore must be balanced carefully against that goal. The information that would be provided to the FAA through a public hearing would duplicate, to a large extent, that already contained in Docket No. 25568. Through its experience at more than a dozen major airports and other facilities, the FAA has been made aware of most of the existing technology regarding computerized access control systems and is confident that technology is available to meet the requirements of this final rule. Additionally, the FAA historically has been reviewing and evaluating all aspects of an airport operator's security program to ensure that it is commensurate with the size, layout, location, and activity level of the particular airport. Consequently, the FAA fully expects to be involved early on regarding the scope and design of a system that meets the required performance standards or an approved alternative that will comply with the final rule. From its historical role, as well as its early participation in the process outlined in this final rule, the FAA believes that the requirements of this rulemaking are both realistic and supportable.

The FAA plans also to issue general guidelines to assist airport operators in their selection of a system, method, or procedure and preparation of an amendment. The guidelines also will assist FAA personnel in their review and approval of the amendment containing an airport operator's proposed strategy

The majority of the airports covered by this rule are primary airports. These airports, particularly the larger ones, have historically funded much or most of their capital development without Federal financial aid. In addition, primary airports receive entitlement funds each year under the AIP. It is expected that these airport sponsors would use the AIP entitlements or their own resources to fund required security capital costs. To the extent that these resources are not adequate at smaller airports and depending on the availability of other funding sources within the AIP, the FAA would consider supporting the program with funding, as necessary. Since the final rule includes a revised implementation schedule, the FAA believes that normal funding within the AIP should be sufficient to aid airports, and a ''set aside'' fund is not necessary.

Fifty-eight commenters are concerned about the costs that would be involved to achieve compliance with the requirement being proposed. They believe the cost figures reflected in the notice to be underestimated. Several commenters, including the ATA, AAAE, and AOCI, provide details of estimated costs. Those organizations indicate that the FAA cost estimates are underestimated by as much as a factor of 10. For that reason, the commenters believe that the Regulatory Evaluation is not accurate. They also state that the regulation being proposed meets the criteria for a major regulation under Executive Order 12291 and, therefore, requires a Regulatory Impact Analysis.

In response to the concerns regarding the estimated costs of the proposal, the FAA reviewed further the data contained in its Regulatory Evaluation. The results of that review are reflected in the evaluation for the final rule. A summary of the Regulatory Evaluation is included in this preamble under the heading ''Economic Summary.''

The concerns identified by the commenters regarding the implementation of the proposal reflect the extremely tight timeframe proposed in Notice No. 88–6. Twenty-nine commenters contend that the unrealistic schedule makes compliance impossible considering the time-consuming process involved for budgeting, designing, bidding, procuring, and installing a system. Several commenters are recommending 2 years in addition to the time proposed in Notice No. 88–6. One commenter recommends that the compliance time for this requirement be 3 years following the allocation of dedicated AIP funds.

The FAA agrees with the commenters regarding their concerns about the implementation schedule proposed in Notice No. 88–6. Accordingly, the final rule contains a revised implementation schedule. The revised schedule constitutes a significant change from the language proposed in Notice No. 88–6.

Thirteen commenters express concern for the effectiveness of a system that airport operators might be forced to implement if they are subject to the schedule proposed in the notice. If 269 airports were required to comply with the schedule as proposed in the notice, the overdemand for qualified vendors would require using inexperienced contractors and companies. The commenters are in favor of extending the time period for implementation since compliance with the proposed schedule could have a detrimental effect on the system quality and reliability, especially at medium- and small-sized airports.

The FAA considers these concerns to be valid, and as stated above, the schedule contained in the final rule is revised. Current data indicate that 270 airports would be required to comply with a final rule.

The performance standards associated with a computer-controlled card access system causes serious concerns for at least 14 of the commenters. Nine commenters believe the time-date requirement for controlling access to be impractical due to necessary adjustments in work schedules to meet demands. Their specific concern is for the impact it will have on day-to-day operations; e.g., reassigning staff personnel, using different gates for delayed flights, working overtime, and changing workshifts.

If a computer-controlled card system is selected by an airport operator to meet the requirements of the final rule, the FAA anticipates that the system would be designed to have unique coding for

The commenters urge the FAA to clarify this issue before proceeding with a final rule. One commenter requests standardization by the FAA in its interpretation of a final rule.

The FAA intentionally did not define ''secured area'' in the notice, nor is it defined in the final rule. To do so could result in the compromise of airport operators' security programs. Use of the term ''immediately'' is intended to stress the urgency with which an airport operator should act to deny access to secured areas by unauthorized individuals. The preamble to Notice No. 88–6 used the phrase ''in a matter of minutes.'' Although the FAA has not further defined this term in the final rule, the FAA believes that the time interval should be the reasonable minimum time necessary to adjust the database to deny access to an individual. Regarding the use of the word ''airport,'' the FAA agrees that the preamble statement referenced by the commenters creates confusion. However, the proposed rule and the final rule clearly establish that the regulated entity is the airport operator. Finally, the FAA does not view the use of the term ''airport operator'' as being inappropriate notwithstanding that an airport operator may have entered into an exclusive use agreement with an air carrier. When entering into an exclusive use agreement, the air carrier must accept the controls and procedures levied upon it by the airport operator. In such a case, the airport operator may be required to establish additional controls or modify existing ones for selected areas of an airport to comply with this final rule.

The FAA agrees with the commenter who requests that the FAA standardize its interpretation of a final rule to prevent serious differences in its implementation. The FAA will accomplish the requested standardization through the issuance of guidance to the various FAA regions for dissemination to the civil aviation security inspectors.

A number of commenters express concern that individuals who ordinarily have access at several airports (such as crewmembers or officials of a multiairport jurisdiction) would need a card for each airport. At least five commenters recommend that a commonality exist among the systems to preclude possible confusion and inconvenience stemming from individual systems which deny access to the above individuals. The commenters, in essence, recommend that the FAA require access control systems that are compatible on a national basis.

The FAA does not agree at this time that imposing uniformity is warranted. First, it would require imposing a uniform type of system, e.g., a computer-controlled card system. Moreover, requiring each airport to have a system with nationwide capacity and compatibility (capable of storing hundreds of thousands of names) would drive system costs up and would benefit only a small segment of the individuals who are associated with the regulated entities. Moreover, since the final rule expands the opportunity to use an alternative system, method, or procedure in response to the comments, nationwide uniformity is not practicable. However, an effort is underway to study the feasibility of an access system with multiairport capabilities. The FAA anticipates that operational issues will be identified in the study.

Twenty commenters address the issue of alternative access control systems that provide an equivalent level of security. Many of these commenters, including operators of small airports, state that nonautomated systems should be permitted. They believe that the requirement for the alternative to have the same capabilities as a computer-controlled card system is too restrictive. Ten comments were received from people who are in the business of providing systems for access control. The intent of these commenters is to make the FAA aware of technologies that are available, and, more importantly, to recommend that a final rule not require one type of system while allowing others to be used by exception as proposed in Notice No. 88–6.

The FAA agrees that, in addition to the specific technology identified in Notice No. 88–6, others may be available to meet the objective of the proposal. The FAA also envisions that operators of the smaller airports may be able to meet the requirements of this final rule with minimal or no computer-assisted hardware installation. The final rule is revised accordingly.

for the various FAA regions will assist the FAA personnel and airport operators in the identification of those access points that should be subject to control by the system, method, or procedure required by this final rule. The FAA does not envision that every door or other access point will need the enhanced access controls. In response to the concern regarding suppliers, the intended effect of the requirement proposed by the notice will not allow the FAA to consider the inconvenience of such a requirement to any one group. Escort procedures are associated with an airport's identification system, and Notice No. 88–6 stated that the proposal would supplement, not replace, an existing identification system required by an airport operator's security program. Escorting of persons will continue to be permitted under the rule.

Twenty-nine commenters state that the complicated and expensive automated security measures proposed by the notice are not necessary at small airports since small airports experience different types of problems than do large airports. Nineteen commenters specifically state that the current procedures are adequate and that the level of security anticipated by the FAA through the final rule can only be obtained via greater discipline of personnel and more training on security issues. Six commenters recommend an evaluation of different airports to determine the scope of security needs and to give consideration to the complexity of operations before effecting a rule to require all airports to have a complex and expensive computer-controlled system.

The FAA agrees with the commenters and recognizes that security varies from airport to airport. The final rule is revised to permit FAA approval of an alternative system, method, or procedure that provides an appropriate level of security commensurate with an airport's needs.

At least three commenters express concern that Notice No. 88–6 does not address the impact on fixed based operators (FBO) and request clarification of this issue. Eleven commenters express the same concern for general aviation (GA) operations.

Upon adoption of a final rule, the airport operator would be the regulated party. As tenants of the airport, FBO's and GA operations would be subject to the control procedures identified by the airport operator.

Seventeen commenters state that the required system will not prevent a person from violating security measures if that person has such a desire. At least three commenters state that the required system will not prevent the PSA Flight 1771 type of tragedy.

The FAA believes that the emergency final rule amending the preboarding screening procedures complemented by the requirements of this rule to require airport operators to implement a positive access control system will substantially increase the overall level of security and will minimize the likelihood of a PSA Flight 1771 type of situation.

Finally, 11 persons comment that the proposed regulation will, at the very least, enhance security to a minimal degree. They contend that in some cases security will deteriorate if all issues involved at any one airport are not considered in the system design and implementation.

The FAA believes that the final rule will enhance airport security beyond a minimal degree since its intent is to preclude access to secured areas by unauthorized persons. Since the commenters did not identify the specific issues to be considered to prevent a deterioration of security, the FAA cannot adequately respond to that concern.

Discussion of the Rule

After considering the comments, the FAA is amending Part 107 to add a new Section 107.14 to require improved access control to secured areas of certain airports. The final rule revises the proposed rule in several significant respects as a result of the comments received.

be currently available or that become available in the future as technology evolves and that meet the performance standards.

Section 107.14(b). Paragraph (b) of Section 107.14 addresses the approval of alternative systems, methods, or procedures. The final rule reflects major changes from the proposed rule as a result of comments received. Approval of an alternative under the final rule is not tied to having the same capabilities as the system, method, or procedure meeting the performance standards of paragraph (a). This permits approval of other than automated systems. However, the critical element for approval of any alternative is the same in the final rule as it was in the proposed rule; the alternative must provide an overall level of security equal to that which would be provided by the type of system, method, or procedure described in paragraph (a).

Section 107.14(c). Paragraph (c) of the proposed rule sets forth the schedule for airport operators to submit the amendments to their approved security programs required by paragraph (a) or (b). The final rule retains the 4-phase approach and the timeframes for airports subject to each phase to submit their amendments. Airport operators may submit their amendments prior to the date required by this final rule. For example, since some airport operators will be able to meet the requirements of the rule without installing a system, method, or procedure that meets the performance standards of paragraph (a), and will be able to meet the intent of the rule on a much faster timeframe, they are encouraged to submit their plans before the dates required by the final rule.

Operators of Phase I airports, where 25 million or more persons are screened annually or as designated by the Director of Civil Aviation Security, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase II airports, where more than 2 million persons are screened annually, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase III airports, where 500,000 to 2 million persons are screened annually, must submit amendments by 12 months after the effective date of the final rule. Operators of Phase IV airports, where less than 500,000 persons are screened annually, must submit amendments by 12 months after the effective date of the final rule.

Paragraph (c) of the final rule also includes an implementation schedule. The implementation timeframe, which was in paragraph (a) of the proposed rule, is substantially revised in the final rule. The proposed rule provided that "the system must be in use within 6 months" after approval of an airport operator's amendment to its approved security program. The proposed rule also provided for an additional 6 months at certain locations on an airport. The short timeframe of the proposed rule applied to airports in all four phases.

The final rule is different in several major respects. First, the implementation schedule is now linked to the phases. The final rule provides that the system, method, or procedure must be fully operational within 18 months after approval of an airport operator's amendment to its approved security program only at Phase I airports. Operators of Phase II airports have 24 months after approval of the amendments to their approved security programs. Operators of Phase III and IV airports have 30 months. The approved amendment for each airport shall specify how the system, method, or procedure will be fully operational within the appropriate timeframe.

Finally, paragraph (c) has added language to address the situation where an existing airport becomes subject to the requirements of Section 107.14 after the effective date of the final rule. The timeframes for such an airport operator to submit an amendment to its approved security program and to specify that the system, method, or procedure must be fully operational depend on the phase that is applicable to the airport.

Section 107.14(d). A new paragraph (d) is included in the final rule to address the situation of brand new airports commencing operations after December 31, 1990. It is FAA's view that new airports should meet the requirements of Section 107.14 when they commence operations since the improved

of the Director of Civil Aviation Security.

Fifty-eight of the 122 written comments received as of May 31, 1988, in response to Notice No. 88–6 published in the Federal Register on March 18, 1988, pertain to the economic impact of the proposal. These comments were submitted by industry associations, individual airport authorities, air services, and producers of airport security equipment. The vast majority of these comments generally state that the FAA had underestimated the total costs required for compliance with the proposed rule.

Many of these comments are premised on two basic assumptions: (1) that the FAA underestimated the cost per access point, and (2) that the FAA underestimated the number of access points requiring enhanced control at airports.

The FAA has carefully reviewed its own cost estimates in light of comments received and does not agree that it underestimated the cost per access point. The FAA's estimates of design, testing, hardware, installation, maintenance, software update, and security card replacement costs were based on price quotes of manufacturers of computer card access systems. Cost per access area will differ for airports of different sizes, due to the large number of variables in required equipment, labor and maintenance and structural alterations associated with retrofit of existing systems. Thus, it is misleading to estimate total costs of the proposed rulemaking based on the cost per access area of one or two airports, as was done by some commenters.

Regarding the number of access points, the FAA believes that several commenters misunderstand the scope of the proposed rulemaking and have therefore overestimated the number of access points that the rule would require to have enhanced access controls (system, method, or procedure). In determining the number of doors that would be affected, the FAA did not envision that every door in a terminal area would need to be so controlled. Rather, the design of many airport buildings permits a ''funneling through'' effect which would minimize the number of doors requiring such enhanced control. In general, funnelling persons through a single point with enhanced access controls to an area would eliminate the need to have such controls at subsequent doors.

Therefore, for its economic analysis of the final rule, the FAA has not revised its estimates of the average number of access points that would need to be controlled in the four categories of airports. The number of access points for airports of each phase remains as follows in the economic analysis of the final rule:

Phase I: 128 access points
Phase II: 60 access points
Phase III: 25 access points
Phase IV: 10 access points

Several airport operators comment that the cost of the required security measure described in Notice No. 88–6 is excessive and would impose a heavy financial burden on them. The FAA recognizes these concerns and has therefore emphasized in the final rule that an airport operator may submit an amendment to its security program for approval by the Director of Civil Aviation Security, which does not necessarily require a computer card or automated system. The Director of Civil Aviation Security may approve such an alternative system, method, or procedure if, in the Director's judgment, it provides an overall level of security equal to that of a system, method or procedure meeting the performance standards outlined in the final rule. These performance standards, although stringent, do not specifically require use of a computerized or automated system.

In addition, the implementation schedule for affected airports has been revised in the final rule to allow more time for compliance, particularly for medium- and small-sized airports. One positive effect of this change may be to spread up-front costs for installation over a longer period of time, easing the burden on many airport operators.

costs are expected to be $1,465,600, with average annual recurring costs of approximately $126,600. For Phase II airports, average hardware and installation costs are expected to be $732,000, with annual recurring costs of approximately $88,730. For Phase III airports, average hardware and installation costs are expected to be $245,000, with annual recurring costs of approximately $42,969. For Phase IV airports, average hardware and installation costs are expected to be $56,000, with annual recurring costs of approximately $3,100. Table I shows the total of these costs by phase of airport and by year for the 270 airports affected by this rule.

TABLE I
COST OF COMPUTER–CONTROLLED CARD ACCESS SYSTEMS FOR YEARS 1989–1998

YEAR	PHASE I	PHASE II	PHASE III	PHASE IV	TOTAL COSTS
1989	**$9,444,067	**$13,417,820	.....	.....	$22,861,987
1990	**$18,599,133	**$24,312,420	**$5,359,491	.....	$48,271,044
1991	*$1,989,000	**$14,430,420	**$5,646,993	.....	$22,066,411
1992	$1,989,000	*$4,548,420	**$5,646,991	**$8,698,050	$20,882,461
1993	$1,989,000	$4,548,420	*$1,890,324	*$359,550	$8,787,294
1994	$2,641,800	$4,548,420	$1,890,324	$359,550	$9,440,094
1995	$1,989,000	$5,520,420	$1,890,324	$359,550	$9,759,294
1996	$1,989,000	$4,548,420	$2,235,324	$818,550	$9,591,294
1997	$1,989,000	$4,548,420	$1,890,324	$359,550	$8,787,294
1998	$2,641,800	$4,548,420	$1,890,324	$359,550	$9,440,094
TOTAL COST (1987 DOLLARS)	$45,260,800	$84,971,700	$28,340,416	$11,314,350	$169,887,266
TOTAL COST (PRESENT VALUE: 10% DISCOUNT RATE)	$33,345,586	$60,267,176	$18,312,651	$7,224,445	$119,149,858

**One-time inatallation costs include planning and procurement of computers, peripheral equipment, card readers, security access cards, engineering site survey and design, and Manager/Operator training.

*Recurring annual coats include security access card replacement, computer maintenance, software update and support, and additional labor. Recurring costs also include card reader maintenance every 4th year.

The revised implementation schedules specified in this rule for airports of the four phases, permitting installation, maintenance and labor costs to commence later than indicated in the Initial Regulatory Evaluation, have the effect of slightly reducing the present value of total costs. Nonetheless, overall estimated costs of compliance have increased from estimates in the Initial Regulatory Evaluation, as a result of an increase in the number of airports in each phase. According to a recent review, there are 17 rather than 16 airports in Phase I, 54 rather than 48 airports in Phase II, 46 rather than 45 airports in Phase III, and 153 rather than 160 airports in Phase IV.

Benefits

The primary benefit of this rule will be the prevention of potential fatalities and injuries and the destruction of property resulting from a criminal act or an act of alr piracy. The tragic loss on December 7, 1987, of 38 passengers and 5 crewmembers aboard PSA Flight 1771, serves as a basis for focusing on the type of catastrophic event that may be prevented by adopting new security regulations. It is important to recognize that the PSA Flight 1771 incident involved a smaller aircraft and passenger load than a typical Part 121 air carrier operation. If such a criminal act were perpetrated in a larger or more heavily loaded aircraft, the casualty loss would have been significantly higher.

city, town or other jurisdiction with a population of 49,999 or less. Applying the FAA's small criterion, 76 of the 427 airports are small. Since only 22 of the 270 airports that would be required to comply with this proposal are small, the requirement for the enhanced access controls will not affect a substantial number (at least one third) of the 76 small airports subject to Part 107. Therefore, this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. This amendment affects only certain domestic airports subject to Part 107 of the FAR. Since there is virtually no foreign competition for the services provided by U.S. domestic airports, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Reporting and Recordkeeping

The requirements in the current regulation (Part 107) for an airport operator to submit an airport security program and amendments to the FAA for approval were approved by the Office of Management and Budget (OMB) under Control No. 2120–0075. Pursuant to this final rule, the FAA forwarded an amendment to Control No. 2120–0075 to OMB in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). OMB approved the FAA's amendment of Control No. 2120–0075 on January 3, 1989.

Federalism Implications

The FAA believes that airport operators and sponsors will not be unduly burdened by the requirements of the final rule based on (1) the availability of AIP funding; (2) potential lower costs associated with alternative systems, methods, or procedures; and (3) the extended implementation schedule providing amortization of installation costs. On these bases, the FAA has determined that this regulation will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980. Because of the substantial public interest resulting from Notice No. 88–6, this rule is considered significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

The Amendment

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR 107) is amended effective February 8, 1989.

The authority citation for Part 107 continues to read as follows:

SUMMARY: This final rule amends the airport security regulations by removing references to certain obsolete official titles and by adding the current official titles. This amendment is necessary because a recent agencywide reorganization resulted in the adoption of several new official titles and in delegations of authority under those titles. This action makes the airport security regulations consistent with current agency structure and should alleviate confusion regarding the agency's reorganization.

FOR FURTHER INFORMATION CONTACT: James E. Parker, Office of Civil Aviation Security [ACS–3], Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Telephone:(202)267–9864.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional organizations. The rest significant change is that the Regional Offices, which formerly reported directly to the Administrator, are now under ''straight line'' authority, meaning that certain individual units within each Regional Office must now report to whichever Headquarters office is responsible for the functions of those individual units.

Within Part 107 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated decision-making authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of the reorganization.

Part 107 must therefore be amended to reflect the reorganizations and changes that have taken place.

Paper Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

Because this amendment is needed immediately to avoid confusion and to effectively implement the agency's reorganization, good cause exists for adopting this amendment in less than 30 days.

Reason for No Notice

In view of the fact that this amendment merely makes an editorial change to Part 107, notice and public procedure on this amendment are unnecessary. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change in the regulation.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus. in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

In consideration of the foregoing the Federal Aviation Administration amends Part 107 of the Federal Aviation Regulations (14 CFR Part 107) effective July 7, 1989.

The authority for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354,1356,1357,1358, and 1421; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

Amendment 107–6

Employment Standards

Adopted: August 15, 1991 **Effective: September 19, 1991**

(Published in 56 FR 41412, August 20, 1991)

SUMMARY: This rule establishes minimum standards for the hiring, continued employment and contracting for air carrier and airport employees engaged in security-related activities. The requirements in this rule respond to the Aviation Security Improvement Act of 1990. The requirements are intended to enhance the effectiveness of U.S. civil aviation security systems in providing safety and security from terrorism and other criminal acts against civil aviation to passengers of U.S. air carriers.

FOR FURTHER INFORMATION CONTACT: Robert J. Cammaroto, Office of Policy and Planning (ACP–1) Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591, telephone (202) 267–7723.

SUPPLEMENTARY INFORMATION:

Background

The destruction of Pan American World Airways Flight 103 on December 21, 1988, by a terrorist bomb while in flight above Lockerbie, Scotland, resulted in the loss of 270 lives and remains the worst aviation disaster of its kind in U.S. civil aviation history. The U.S. Government's response to this tragedy included the establishment, by President Bush on August 4, 1989, of the President's Commission on Aviation Security and Terrorism (Commission). The Commission was tasked with making an assessment of the overall effectiveness of the U.S. civil aviation security system.

The Commission, in its final report filed on May 15, 1990, made a number of recommendations to the President for improvement of the U.S. civil aviation security program which is administered by the FAA's Office of Civil Aviation Security. Many of the recommendations addressed enhanced security procedures that had been or subsequently were implemented by the FAA on its own initiative. Others required legislative action. Subsequent to the Commission's report, Congress enacted the Aviation Security Improvement Act of 1990 (Pub. L. 101–604), which was signed by President Bush on November 16, 1990.

Section 105(a) of the Aviation Security Improvement Act amends section 316 of the Federal Aviation Act of 1958 (Pub L. 85–726) (FA Act) by adding a new subsection ''(h),'' captioned ''Employment Standards.'' This subsection directs the FAA Administrator to prescribe minimum standards for the hiring and continued employment of air carrier and airport security personnel, including contractor personnel. The prescribed standards must address training and retraining requirements, language skills, staffing levels, and education levels. The FAA's response to this mandate resulted in a notice of proposed rulemaking (NPRM), Notice No 91–9 (56 FR 13552; April 2, 1991). In the NPRM, the FAA proposed that parts

operators and airport authorities, 10 employee groups, 3 public interest groups, an air carrier, a medical laboratory, and 4 individuals. The comments are summarized and addressed below.

Section 107.7–Changed Conditions Affecting Security

This final rule amends § 107.7 as proposed in the NPRM by adding a requirement that airport operators notify the FAA when the person designated as Airport Security Coordinator (ASC) changes. Five comments to the provisions in the NPRM were received, three of which supported the proposal. Two commenters stated that it would be burdensome for airport operators to notify the FAA whenever the person designated as the ASC changes. One of these commenters said that this proposal would mean amending, publishing, and distributing the "Airport Operations Security Plan" each time the ASC changed. The commenter also said that the proposal would not be necessary because security-related changes are already communicated at periodic local airport security meetings.

Both commenters also had different interpretations on whether the name of the ASC would have to be communicated to the FAA. For example, one commenter said the proposed section was unclear on whether the ASC must be specified by name or is simply "the person holding a specific classification on the airport management organization structure." The commenter asked whether the airport operator must seek approval from the local FAA security office to make a personnel change in the ASC position.

Response: The final rule remains unchanged from the proposal. The language of the rule is clear that the FAA considers a change in the designation of Airport Security Coordinator to be a changed condition affecting security. The FAA must know the name of each person serving in the ASC position to ensure that immediate and effective communication with the responsible person can be made. Obviously, if the ASC designation is changed, communication between the airport and the FAA could be adversely affected unless the FAA is promptly notified of the change.

Neither is the FAA persuaded that merely designating a job title (such as "facilities manager") is adequate, since at smaller locations the position may be only part-time. Confusion may arise over whom to contact unless a specific person is identified. Most commenters on the proposal supported this requirement as a reasonable and logical addition to § 107.7.

Regarding the commenter's concern that it would be burdensome to communicate ASC changes to the FAA, airport operators are already responsible for keeping the FAA informed of changed conditions affecting security under the existing language of § 107.7. Since changes in the designation of an ASC would not be expected to be frequent, it should not be burdensome for the airport operator to report such changes to the FAA. Lastly, such minor changes should not necessitate reprinting and distributing an entire airport security program document. The inconvenience of distributing updated information would be minimized if the security program documents are designed to permit for the ready removal or replacement of individual pages or sections without disturbing the entire document.

Section 107.25—Airport Identification Media

This final rule establishes standards for the issuance and use of airport identification media. The proposal focused on the training of persons issued identification that permits unescorted access to certain airport areas. The final rule has been revised in several respects in response to comments received.

Since there were a large number of comments on this section, the following discussion is organized by several subtopics: Security Identification Display Area (SIDA), applicability time frame for compliance, curriculum, individual accountability, records, and cost.

Security Identification Display Area (SIDA)

The FAA has adopted the definition of SIDA as it was proposed in the NPRM. The final rule defines the SIDA as "any area identified in the airport security program as requiring each person to

ALPA had a related comment on use of the term ''airport-approved'' in the SIDA definition. It stated that despite the explanation in the preamble of the distinction between ''airport-approved'' and ''airport-issued.'' FAA field personnel and airport operators might interpret the language of the rule to mean that only ''airport issued'' identification is acceptable for unescorted access to the AOA. ALPA recommended clarifying the intent in the rule by using ''airport or airline-approved security identification medium.''

Response: The definition of SIDA in the final rule remains unchanged from the proposal. As was explained in the preamble of the NPRM, the SIDA at any airport generally would include secured areas of airports as set forth under § 107.14, most and perhaps all of the AOA defined under § 107.1, and any other areas specified in the airport's individual airport security program. Unless under airport-approved escort, each and every person within the SIDA is required to continuously display airport-approved identification. In adopting the definition of the SIDA, the FAA reaffirms the intention that the requirement to display airport-approved identification media in the SIDA applies to everyone without exception and regardless of duties, affiliation, position, or past practices. The SIDA would not include the sterile area since the latter are intended for access by members of the public without escort.

Because each airport has peculiar physical and organizational attributes, the SIDA for each airport can only be adequately set out in an airport's individual airport security program. This approach satisfies the flexibility concern of airport operators while allowing for the protection of security-sensitive information that should not be publicly disclosed.

The proposed SIDA definition purposely allows for the flexibility that the comments mention. While the SIDA generally would encompass the AOA, the definition would allow for site-specific provisions at those airports where general aviation and other areas are positively separated from air carrier operations, and appropriate security provisions acceptable to the FAA are in place.

The FAA does not agree with the comment that the term ''airport-approved'' will be misinterpreted to mean ''airport-issued'' by FAA field personnel or airport operators. Airport security programs already explain that the term ''airport-approved identification media'' could include media that is not necessarily issued by an airport. Examples of such media include FAA Form 8000.39, and air carrier identification displayed according to agreements with the airport. Thus, FAA field personnel and airport operators are well aware of the long accepted distinction.

Applicability

The proposed training requirements which are adopted unchanged in the final rule apply to any person who is issued airport operator identification media providing unescorted access to the SIDA. Nineteen commenters addressed the scope of applicability. Most of the commenters were airport operators or airport associations. The ATA, NATA, and National Weather Service also commented.

Comments from airport operators and associations stated that they did not understand their area of responsibility for training. These commenters wanted to know whether they would be responsible for tenant-employee training, the training of any individual they authorize to have access to secured areas, and whether they could require air carrier employees to attend airport training.

The ATA stated that it will be costly to airlines to pay for employees to attend duplicate airport training. Their concern was that air carrier personnel performing development, construction, or inspection duties might have to go through redundant training, and in their comment requested that such personnel be excluded from the rule.

NATA requested that training standards for general aviation area users and fixed-base operators (FBO) and FBO customers be no more than a verbal briefing with a handout of written materials. It also requested that an industry task force work out standards for fixed-base customers and FBO employees.

accepts for unescorted access into the SIDA. Examples of identification media normally approved for use at airports include identification media issued by the FAA and air carriers. Under the proposal, the airport only would be responsible for training individuals, regardless of their employers, to whom it issues identification media which provide unescorted access privileges. The airport operator is not responsible for training individuals who obtain identification media from other entities. Training for these other individuals is the responsibility of the issuing entities. This training can be accomplished through a variety of methods such as through local agreements, air carrier security programs, or under internal FAA guidance in the case of individuals having access authority via FAA Form 8000–39.

To the extent that some air carrier employees performing development, construction or other duties at airports are issued identification media providing access to the SIDA by an airport, limited site-specific airport training would be required for each person issued such identification. FAA is sensitive to the fact that an air carrier employee may be required to hold one or more airport-issued identification media because of job duties and that the employee might have already received airport security training through a previous airport-operator. In light of this possibility, FAA will approve training programs that only require site-specific training for individuals who completed SIDA training elsewhere when that training can be verified by the airport operator at the temporary site. This limited instruction would include coverage of topics peculiar to the airport issuing the identification media, such as the procedures for contacting local law enforcement and the airport's physical layout.

In response to the NATA comment and others concerning general aviation areas and FBO's, the rule provides flexibility in defining the SIDA so that FBO and general aviation areas need not be included within the definition, given FAA approval of other security provisions.

Regarding the interrelationship of SIDA training to possible criminal background check requirements, the FAA will determine at the point that criminal background checks are required what restrictions, if any, should be imposed on temporary issuance of unescorted access media. However, identification media providing unescorted access to the SIDA, whether temporary or permanent, may not be issued to anyone who has not undergone the training in accordance with § 107.25.

An airport-operator could condition its approval of identification media issued by other entities on the provision that those entities provide adequate training for their personnel. Such training could be provided by the airport-operator or through a training program of equivalent quality provided by another organization.

Time Frame for Compliance

The NPRM proposed the following phased compliance schedule:

(1) After October 1, 1991, an airport operator may not issue identification media to anyone who has not successfully completed the required training.

(2) By March 1, 1992, at least 50 percent of all persons who possess airport-issued identification must have successfully completed the required training.

(3) Alter July 1, 1992, an airport operator may not permit anyone to possess any airport-issued identification unless that person has successfully completed the required training.

Nine commenters addressed the compliance time for the required training. Commenters believed that the time frame is not realistic, particularly the October 1, 1991, deadline. They stated that the deadline is too burdensome and too difficult to comply with. A few commenters requested that the training time schedule be coordinated with implementation of an access control system so that training would not have to be conducted by the deadline and then repeated once an access control system is in place. One commenter stated that since no curriculum has been developed, the October 1 deadline is unrealistic.

to be completed not later than May 1, 1993.

The training requirement under this section is a one-time requirement. The rule does not establish any type of retraining requirement. If an airport does not have its § 107.14 access control system in operation when SIDA training commences, then the airport operator may find it necessary to provide supplemental training on use of the new access control system when it becomes operational. Note, however, that the fundamental nature of the training required under § 107.25 should be readily compatible with and applicable to any access control technology adopted into an airport security system.

Curriculum

Proposed § 107.25(e) lists topics that must be included in the curriculum of an airport's security program. These topics are: (1) control, use, and display of airport-approved identification access media; (2) challenge procedures and associated law enforcement support; (3) restriction in divulging information or an act of unlawful interference with civil aviation; (4) non-disclosure of information in the security system; and (5) any other topics deemed necessary by the Assistant Administrator for Civil Aviation Security.

The nature of the comments received fell into two broad categories. The first group of commenters expressed the belief that current training methods are adequate and that no additional training curriculum is necessary. For example, the Port Authority of New York and New Jersey stated that at Kennedy International Airport each individual issued a new identification (as part of their new automated system mandated by § 107.14) must acknowledge receipt of the airport's general security regulations. It stated that this procedure should qualify as meeting the proposed training standard.

The other category of commenters expressed the opinion that the proposal inadequately detailed the content of the curriculum that would be required. Most of these commenters requested a more detailed curriculum or guidance on developing such a curriculum. According to these commenters, the proposed curriculum was too basic. It did not specify the number of hours required. It was silent on issues, such as concealment of weapons, sabotage, profiles, screening equipment, and levels of security. They said that the minimum curriculum was too general to establish a standard and that it did not allow for public comment on the details of a curriculum, and that costs could not be accurately anticipated. APANA commented that "by failing to establish uniform, minimum standards in a public forum . . . the proposed rule fails to meet Congress' mandate contained in section 1357(h)."

The commenters raised the following questions about the proposed curriculum:

(1) How many hours?

(2) Is it annual or otherwise recurring?

(3) Is it formal classroom training or can video tapes be used?

(4) What "other topics" might be necessary and for whom? When will these other topics be identified?

(5) Who is responsible for the training—tenants or airports?

The City of Chicago asked if video training of individuals would be acceptable in light of the number of people who would need training.

The Indianapolis Port Authority proposed that a badge recipient be given a training document and verbal explanation of the use of the badge when he or she is given the badge.

The State of Alaska stated that, as part of its photo identification system, at small airports subject to part 107 it provides a 1 1/2-page document that explains the system. When signed by the badge holder, the document becomes a contract between the badge holder and the airport.

topical areas was set out in the NPRM and appears in the final rule. Those persons required to display airport-issued identification, for the most part, are not security professionals and the training for them is not expected to involve any more than preparing them to function in a security-sensitive environment. Thus, there is no need for them to receive training on screening equipment, sabotage, or profiles. These are separate, more detailed training topics for people whose job function is to provide security.

Due to the individual configuration, size, types of operations, extent of risks, and law enforcement procedures of each airport, it is not possible to set out in the public rule every aspect of each training program. Additionally, much of the site-specific information, as well as details of challenge procedures and other security procedures, are security sensitive and cannot be disclosed without compromising the integrity of the airport security system. Thus, the FAA has met the legislative mandate to establish uniform standards through this public rulemaking action while maintaining the integrity and efficacy of the aviation security system. In the immediate future, FAA expects to provide additional guidance directly to airport operators through local FAA special agents.

While the precise cost of providing training will vary from one airport to another, the curriculum requirements and cost estimates disclosed in the NPRM reasonably portray actual expected costs. As discussed in the regulatory evaluation included in the docket of this rulemaking and summarized in the preamble of the NPRM, the FAA expects that a maximum of 2 hours of training per employee will be sufficient at most airports. The FAA does not agree with the commenters who believed that inadequate hours and cost-per-hour data were provided in this rulemaking.

In response to queries as to whether video tapes or oral briefings may be used in providing training, the rule does not prohibit the use of any particular training methods: however, prior to conducting training the anticipated method of instruction and curriculum must be approved by the FAA as a part of the airport operator's security program.

In this regard, the FAA recently produced and distributed to most airports affected by this rulemaking, a series of videotapes entitled "Airport Security: A Team Approach." One segment of that series specifically addresses security in the AOA and most of the required major topics. Use of this video tape could constitute a major component of an acceptable training program.

The curriculum set out in the NPRM and adopted in the final rule is intended to make employees having unescorted access privileges to the SIDA aware of their responsibilities regarding their individual role in airport security. Such basic concepts as not loaning identification media to others, reporting lost or stolen identification to the appropriate authorities immediately, and the critical nature of and correct procedures for exercising a challenge when required are viewed as essentials. Written material may be used to supplement oral or video presentations on these subjects. However, language has been added to § 107.25(e) of the final rule to clarify that an opportunity for attendees to ask questions must be provided.

In response to other commenters, the requirement for training on associated law enforcement support is an important part of knowing what to do if an individual without proper identification media is encountered in a secure area. Law enforcement support requirements are specified in §§ 107.15, 107.17, and 107.19.

In response to the comment that these requirements should come under the authority of the Administrator of the FAA, the agency is guided by the Aviation Security Improvements Act of 1990. That legislation created the position of the Assistant Administrator of Civil Aviation Security and makes the person holding that position responsible for implementing and enforcing these regulations. In carrying out these responsibilities, this person is subject to the Administrator's direction and authority.

Finally, the U.S. Department of Commerce (National Weather Service) objected to "any attempt to characterize its employees who regularly perform their duties in areas within the airport controlled

such a procedure is a part of the security plan.

Individual Accountability

Proposed § 107.25(f) prohibits a person from using any airport-issued identification media to gain access to an SIDA unless the media was issued to that person by the appropriate airport authority. One comment was received on paragraph (f). It supported the requirement if it holds the individual responsible directly to the FAA.

Response: The intent of this provision is to prohibit an individual from using someone else's identification media for access to the SIDA, whether such identification is issued by the airport operator or another entity. In the proposal, the prohibition was limited to only airport-issued identification when, in fact, the intent also was to prohibit the misuse of identification media issued by other entities that is airport approved. The final rule has been changed to prohibit an individual from using not only someone else's ''airport-issued'' identification, but also from using ''airport-approved'' identification. This change comports with the intent of the proposal and clarifies the scope of the prohibition. Of course any individual violating the identification media use restrictions under this section would be subject to an FAA enforcement investigation, and potentially a civil penalty.

Records

Proposed § 107.25(g) requires an airport operator to maintain a record of all training given to each person under this section until 180 days after the termination of that person's unescorted access privileges.

Five commenters addressed the proposed recordkeeping requirement. All commenters believed that the proposed requirement will be burdensome. One commenter was concerned that the FAA may use the records to hold airports accountable for security breaches. Another commenter was concerned that the records will be held by the airport rather than the employer of the individual and that the airport may be liable for releasing this information. One commenter questioned the benefit of the requirement to the airport operator. Will the record of security training for an individual serve as a defense for an airport operator for a purported part 107 violation?

One commenter referred to this requirement as an ''administrative nightmare'' because of the high turnover rate and the 6-month retention. The commenter requested allowance to purge the data base after the individual's unescorted access privileges are terminated. Another commenter said the 180-day retention requirement will overload an already strained recordkeeping system.

Response: This provision is adopted as proposed. As stated in the preamble of the NPRM, records must be maintained to document compliance. Such records would provide vital information regarding training during investigations of security-related matters. Since airport operators are required to provide training, it is consistent to require that they also maintain records of training. This requirement is not intended to be an administrative burden. It is not expected that such basic information as the name, date, place and extent of training received by an individual would be time consuming to compile or take too much space in a data bank. These records would greatly improve the management of the airport security system and should not include anything other than training record details. They should not be accessible to anyone not having a bona fide ''need to know'' training record details.

The requirement to keep records is not intended to serve as a defense for any purported Part 107 violation. However, a charge that required training has not been provided might be refuted by current and accurate records to the contrary. In this respect, compliance with the record requirement is a great benefit to the airport operators.

The 6-month retention is primarily for investigation purposes. The FAA believes that, since each record contains only a minimal amount of information, the 6-month retention creates only a slight burden on the operator.

employees to be trained would be $180,000.

Raleigh-Durham expects the cost to be $7,889,275 over 10 years or in excess of three-quarters of a million dollars per year. These figures are based on 3,500 persons for a 6-hour class having access to the secured areas. Initial curriculum development is estimated at $141,275; updated over 9 years at $472,500; materials at $500,500 for 10 years, labor costs for the class at $475,000, and record maintenance at $6,300,000.

Response: The cost estimates in the Regulatory Evaluation accompanying the NPRM were reviewed in response to comments regarding the accuracy of proposed training costs. The initial cost figures have been confirmed as being accurate. The projected cost of training is based on the scope of training, as set out in the NPRM and final rule, and the fact that training sessions are not expected to exceed 2 hours per person at almost all airports. This information was fully disclosed in the NPRM and is repeated herein. Some commenters improperly based projected costs on training times far in excess of 2 hours and with the expectation that all personnel would require training. In fact, only individuals with airport-issued identification providing unescorted access to the SIDA are required to undergo security training. In the interest of reducing possible training costs, each airport operator subject to this action should carefully reassess which employees have a genuine need to have unescorted access privileges. It may be possible to reduce costs by withdrawing the privilege from some individuals. The FAA does not anticipate the availability of funding grants of any kind to cover the cost of providing training under this rule.

Section 107.27—Evidence of Compliance

This section proposes that airport operators provide the FAA with evidence of compliance when requested. This should not require airport operators to institute new or expanded recordkeeping systems beyond those required elsewhere in Part 107. The final version of 107.27 is intended merely to guarantee FAA access to existing records when necessary.

Eight commenters addressed this proposal; one, the AFA, supported it. The remaining commenters represented airport operators who felt that the administrative burden and cost of this proposal (e.g., additional storage space and staff) will be excessive and will compete with funds for improving the safety and efficiency of airports. Some commenters stated that the airport operator should not be responsible for documenting and maintaining records on airline employees who disregard security rules. Such documentation should be the responsibility of the airlines.

One of the commenters asked, "Is the record retention requirement really necessary under the absolute liability standard now so unfairly imposed by certain segments of the FAA upon airport operators facing liability for the culpable conduct of independent third parties?"

Another commenter said that it is unrealistic to require airports to provide the FAA with immediate access to tranmg records; most airports do not have 24-hour or weekend and holiday pass and identification coverage for the offices where security records are maintained. Another commenter said that FAA access to security records has never been a problem; therefore, the proposed section is unnecessary.

Response: The concerns expressed by airport operators about the administrative burden of documenting and maintaining records to show employee compliance with security programs do not relate to the intent of this section, which deals with airport compliance with security programs not employee compliance. Airports must show evidence of compliance with security programs by making records available to the FAA on request. The kinds of records that relate to the security program are records on security training (as required under proposed § 107.25(g)) and records on law enforcement actions (as required under existing § 107.23). The airport may physically keep these records or individual entities may keep records for their employees. Either way the airport is responsible for knowing where the records are and for providing immediate access to them. The FAA prefers that the airport physically maintain the records, but it is not requiring airports to do so. Law enforcement records subject to FAA review under 107.23

Section 107.29—Airport Security Coordinator

This section proposes that airport operators appoint an Airport Security Coordinator (ASC) to act as a liaison between the airport and the FAA. The ASC would oversee airport security functions, e.g., records maintenance, compliance, and program development and training.

Twelve commenters addressed this proposal; four of the commenters supported the proposal, including the AFA and three airport operators. Some commenters stated that airports already have a director or manager responsible for airport security and FAA liaison and that an additional position for this purpose would be costly and burdensome. Commenters also stated that determining who should fulfill this role should be left to each individual airport.

One commenter said that the proposed section needs clarification "as to the degree of 'designation' and how any changes of said designation relate to § 107.7(b)."

An airport authority said that the FAA should provide a better definition of the duties and responsibilities of the ASC. Also, the FAA should determine the effect of a recent rule requiring airport access control systems (§ 107.14) on the ASC position.

ATA stated that, if an ASC position were to be created, the position should be limited to part 107 responsibilities. ATA maintains that if the ASC were to exercise air carrier responsibilities under part 108 as well, then "air carriers would be exposed to a welter of uncoordinated security demands, which would contradict the efforts of the air carrier industry and the FAA to assure that security matters be dealt with in a uniform fashion."

Response: The FAA disagrees with the commenters concerns that the ASC position would be in addition to other security positions and would thus be costly and burdensome. As stated in the preamble of the NPRM, most ASC positions are not expected to be either full time or to require additional positions at most airports. Rather, the ASC would most likely be someone who is already fulfilling some securityrelated functions, either as his or her sole duties or as a collateral assignment. Significantly, the ASC position is not intended to embody any authority or responsibility which does not already fall to airport operators under the current Part 107 program.

The requirement to designate an ASC is intended, in part, to provide program oversight and continuity. Further, as the airport operator's recognized contact point for security matters, the ASC can contribute toward a more effective FAA-industry network, both locally and nationally.

Regarding ATA's comment that uncoordinated security demands could ensue if the ASC were to exercise air carrier security responsibilities, the rule is clear that the ASC's only role is to serve as the airport operator's primary security contact with the FAA. FAA does not anticipate the ASC as having an operational or oversight role regarding Part 108 requirements.

In terms of the "degree of designation" and "changes of said designation" of the ASC, the FAA's position is that the name of the ASC (or name of a new ASC) should be reported to the FAA to ensure that the FAA has contact with the correct person. As already discussed in the FAA's response to comments on § 107.7, as well as above, the ASC is likely to be filling several security positions; therefore, the FAA would need the name of the current ASC to make appropriate and timely contact.

In considering the comments received which related to this aspect of the ASC designation, the FAA also concluded that it is appropriate to require that the designation include a method to contact the ASC on a 24-hour basis. In order to be acceptable, the designation should include such information as home and work telephone numbers, and where appropriate, pager and facsimile machine numbers. The FAA will permit designation of one or more alternate ASC's to be contacted in the event of the unavailability of the ASC.

The intent of § 107.29 is to ensure that there is a primary contact person who oversees part 107 security functions. As mentioned in the preamble of the NPRM, there are positions under part 108 which are already intended to serve the air carriers in a similar capacity, i.e., the Ground Security Coordinator and Inflight Security Coordinator under existing § 108.10. Ideally, the ASC's should serve as the liaison or contact point for their air carrier counterparts as well as for communications with the FAA. Additionally, the ASC's will be in a position to seek resolution of security-related issues not only for the airport operator's part 107 concerns, but also as tenants' security concerns are impacted by the airport operator responsibilities under that part.

Section 108.9—Screening of Passengers and Property

This section proposes that air carriers staff their security checkpoints with both supervisory and non-supervIsory screening personnel in accordance with the standards specified in the air carriers' security programs. These standards are new to carriers security programs.

Six commenters addressed this proposal; AFA supported it. Two commenters, one of which was the Independent Union of Flight Attendants (IUFA), objected to the proposal's lack of specific staffing requirements on the basis that the public was denied an opportunity to comment on the specifics. The IUFA said that the proposed rule will limit the number of security duties per individual, but did not specify the limit.

ALPA said that the proposal would duplicate what is already required in FAA-approved security programs pursuant to § 108.5. ATA stated that requiring additional layers of personnel will not automatically enhance security and that this proposed section does not reflect demonstrable security needs.

The Regional Airline Association (RAA) said that additional staffing at regional airports may not be warranted due to the lower numbers of passengers passing through security checkpoints which allows for more effective screening of all persons. The costs of full-time supervisory coverage would be high for regional airports. RAA recommended that the FAA make this staffing requirement applicable only to airports enplaning more than 500,000 persons annually.

Response: The final rule is unchanged from the proposal. The FAA is convinced that improved supervision is critical to enhanced screening effectiveness. Section 108.9(d) requires air carriers to staff their security checkpoints with supervisory and non-supervisory personnel in accordance with standards specified in the air carriers' security programs. The actual staffing requirements would be in the security program and are not set out in the public rule because the staffing requirements at a particuiar checkpoint must be specific to the peculiar needs of the location involved. Specific staffing requirements are related to airport activity and threat factors. The particularized need of each individual checkpoint, coupled with the fact that knowledge of the actual staffing details could assist anyone attempting to breach security, necessitates placing the detailed standards for each checkpoint in the security programs.

Section 108.9 is not duplicative of § 108.5 because it adds a specific new standard that requires supervisory staff at checkpoints. For the first time, Part 108 explicitly requires supervision of checkpoints so that screeners have regular and consistent supervision. Criteria for the number of supervisors and screening personnel and the pattern of supervision will continue to be contained in each security program under § 108.5, which will allow latitude geared to the level of activity at the checkpoint. Supervision at low activity airports is required, but the number of supervisors and degree of supervision required in the security program will be appropriate to the size of the airport and the degree of security threat.

Section 108.17—Use of X-ray Systems

The proposal adds a new subparagraph (h) which would require that air carriers comply with X-ray operator duty-time limitations as specified in the carriers' security programs. X-ray operators would be guaranteed scheduled job rotation frequencies for the purpose of sustaining vigilance.

out of the need for flexibility to develop and amend standards to fit the requirements of particular checkpoints and because this information is security-sensitive.

The FAA agrees that rotation frequency should be based on attention span and should be neither too long nor too short for maximum alertness. Attention span varies according to workload conditions. Therefore, rotation frequency and duty times will generally vary according to work conditions.

This requirement does not duplicate existing requirements in either § 108.5 or air carrier security programs, neither of which specifically mandates duty-time limits.

Section 108.29—Standards for Security Oversight

The NPRM proposed that air carriers ensure that employees and contractors, on a need-to-know basis, have knowledge of certain specified information on security requirements. In addition it proposed that each carrier's Ground Security Coordinator (GSC) be required to perform and document formal semi-annual evaluations of the station's security provisions and to conduct daily informal reviews of the same.

Four commenters, including AFA, ATA and ALPA, addressed this proposed section; two of those (AFA and ALPA) were in support. ALPA commented that this proposed section would ensure greater visibility of GSC's. AFA supported the proposal as necessary for the effective gathering and dissemination of security related information, as well as evaluating the effectiveness of the station's security functions. ATA commented that existing procedures already provide adequate security oversight, i.e., passenger screening points currently undergo frequent tests of their effectiveness, and that carrier station personnel are aware of the heightened need for vigilance in recent years. In addition, the evaluation and review requirements imposed on the GSC, coupled with personnel evaluation requirements under § 108.31, would be burdensome. The ATA was concerned that the proposed standards for security oversight are not based on a demonstrated need.

Another commenter, an air carrier, was unsure of the level of detail of the proposed evaluation and whether this function could be rotated among carriers. The air carrier also said that the GSC currently conducts annual evaluations of security. The commenter asked whether the proposed requirement for semiannual evaluations would be in addition to the annual evaluation.

Response: As stated in the preamble of the NPRM, the section would require several actions by air carriers. The proposal was based on the FAA's determination that existing procedures do not provide adequate oversight. Additional oversight is needed to ensure an improved security system. As an example, FAA security inspections have revealed that, when several carriers share a screening contractor at the same airport, some carriers have assumed that another carrier has passed on the security information to employees of the contractor. This assumption ocassionally has proven to be incorrect, and none of the carriers have passed on such information. Proposed § 108.29(a)(1) and (b) have been adopted in this final rule and address this problem.

Notwithstanding the benefits associated with the proposed standards for security oversight, the FAA recognized the potential for a duplication of effort in requiring both daily reviews and semiannual evaluations. As the ATA pointed out, current procedures include scheduled air carrier station inspections conducted by FAA special agents and periodic tests of checkpoint weapons-detection effectiveness. In addition, the final rule establishes oversight and accountability at the air carrier station level by requiring GSC's to conduct daily reviews of all security related functions (§ 108.29(a)(2)). No specific documentation requirements accompany § 108.29(a)(2). Following careful evaluation of comments regarding the added burden the proposed rule would have placed on carriers without significant benefit, the FAA has deleted the proposed requirement to conduct semiannual evaluations. Significantly, however, the final rule also has been modified (§ 108.29(a)(2)(ii)) to explicitly require the air carrier to detect and immediately correct instances of noncompliance identified during the daily reviews. The identification and correction of weak-

This proposed section establishes employment and training standards for screening personnel, including requirements for educational or experience levels; aptitude and physical abilities; the ability to read, speak, and write English; and completion of security program training. Further, the proposal provides for on-the-job training, remedial training, and evaluations. The proposal also provides for certain exceptions to the employment standards for screening functions conducted outside the United States. None of the 11 commenters in this area fully supported this proposed section. Most of the commenters, including the Joint Council of Flight Attendants Union, the Aviation Consumers Action Project (ACAP), IUFA, RAA, AFA, and APANA, said that the proposed standards provide little detail in terms of training curricula, methods, and hours.

Many commenters objected to the FAA's decision not to publish the specifics of these standards. ACAP, IUFA, AFA, and an individual commenter said that there would be no security risk in publishing standards, such as the aptitudes and physical abilities required of screening personnel; by not doing so, the FAA is denying the public the right to fully evaluate the proposed rule.

ATA objected to the requirement that the GSC conduct semiannual evaluations of screeners, stating that the GSC is not fully qualified to judge such areas as physical abilities and skill levels. ATA recommended that this function be assigned to the provider of screening services, "which would have the experience to make evaluations that affect not only the quality of screening but also the continued employment of individual screeners."

RAA commented that the FAA's lack of specific standards might cause air carrier concern about possible violations of Federal and state laws relating to discrimination. It stated that "Carriers should not be forced to defend the objectivity and relevance of any tests/examinations they may require in order to comply with necessary, but vague, hiring standards."

One commenter, a medical laboratory, noted that the proposed section does not mention standards for urine drug testing of applicants and employees, and that such standards should be a part of the proposed rule.

Another commenter said that employment standards for screening personnel could adversely affect the labor force eligible for employment. The proposed section also could result in higher wages which would affect airline costs and airport wage rates.

Response: In response to the many comments regarding non-disclosure of the specifics of screening personnel employment standards in the NPRM, the FAA carefully reviewed the current standards contained in the security program. The security program has for over a decade had training standards for screening personnel. Prior to this rulemaking, the FAA had amended air carriers approved security programs to strengthen the training and employment standards for security screeners. The provisions in the Aviation Security improvement Act mandating the establishment of standards did not expand the FAA's authority to issue such standards, since that authority can be found in the preexisting FA Act. The FAA's review of the security program resulted in a determination that certain elements of the existing security program requirements could be included in the public rule without jeopardizing the security of civil aviation. Thus, the following preambular discussion and final rule language, itself, provides more details regarding the standards for screener personnel. Section 108.31(a)(2) has been expanded to include more information about aptitude and physical ability requirements. These are performance-based standards designed to measure an individual's functional ability to successfully complete job tasks related to security duties.

Section 108.31(a)(2)(i) requires that persons used as X-ray operators (i.e., interpreters of X-ray images) must be able to see and distinguish the imaging standard used to determine the performance of the X-ray system itself. For those X-ray images which contain colors (through computer enhancement), the operator must be able to distinguish those colors and to explain their significance. A person with some color perception defect may well be able to perceive the three or four strong colors used in current equipment. The FAA expects that a screener will only be able ". . . to explain what each color

detector is indicating an excess amount of metal on an individual's person. Visual alarm indicators on metal detectors become very important at a crowded, noisy checkpoint, especially where several parallel metal detectors may be emitting a number of similar audible alarms.

In § 108.31(a)(2)(iii), screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment. Screeners must be able to hear not only the audible alarms of the equipment they use, but also spoken communications from their co-workers, supervisors, and the public.

Screeners performing physical searches of baggage and other objects must have dexterity and some measure of strength. Such searches must be done both thoroughly and efficiently. No specific quantification is provided in § 108.31(a)(2)(iv). A screener must be able to efficiently and thoroughly manipulate items to be searched.

Under § 108.31(a)(2)(v), screeners performing pat-downs or hand-held metal detector searches of persons must have the dexterity and capability to perform those procedures. This standard will not prevent individuals with physical limitations or impairments from becoming screeners provided they can perform the duties of the position.

The English language requirement proposed in § 108.31(a)(3) is a new requirement. The NPRM specifically invited comments on the language issue, but none were received. While no one commented on this issue, the final rule includes additional language to clarify the intent of the requirement. The additional detail will be useful to persons interested in seeking employment as screeners. As with basic aptitudes and physical abilities, English language qualifications are measured against the requirements of screener duties, rather than standardized academic tests.

Section 108.31(a)(3)(i) requires that screeners must be able to understand and carry out written and oral instructions in English regarding the proper performance of their screening functions. Because security training and supervision in the United States is presented in English, it is essential that screeners understand written and oral instruction in all phases of their jobs.

Section 108.31(a)(3)(ii) requires that screeners be able to read English-language identification media; credentials; airline tickets; and labels on bottles, aerosol cans, packages, and other items normally encountered in the screening process.

Section 108.31(a)(3)(iii) requires that screeners speak and understand English well enough to understand and answer questions and to give comprehensible directions to persons undergoing screening. These skills are very basic in a position with such considerable public contact, yet the FAA has often received complaints from the public concerning the lack of such skills.

Finally, § 108.31(a)(3)(iv) requires that screening personnel, when charged with recordkeeping duties, be able to write incident reports, statements, and log entries in the English language. This is intended to ensure that no person incapable of writing in English is assigned recordkeeping duties. In response to comments on § 108.31(d), the FAA has reevaluated the benefits that would have accrued from the proposed requirement that GSC's conduct semiannual evaluations of screeners. The FAA has concluded that an annual evaluation, coupled with the requirement of immediate remedial training for screeners who fail an operational test, are sufficient safeguards to ensure the desired level of security effectiveness. Thus, in the final rule, the requirement for semiannual screener evaluations has been changed to an annual evaluation. Further, the FAA doesn't agree with ATA's comment that GSC's lack the qualifications to conduct the evaluation of screeners. GSC's are an integral part of the security system and are tasked in the final rule to conduct daily reviews of all security related functions.

With respect to the comment on the need to drug test security screeners, drug testing is already required by FAA regulations.

tive of the certificate holder . . . is present . . . ''. This change is to clarify that the English speaking person must be a representative of the certificate holder. A ''representative of the certificate holder'' could include the certificate holder's direct employee, an employee of another carrier (foreign or U.S. flag), or a screener or other contract employee as long as such a person is acting on behalf of the certificate holder.

Public's Right to Comment

Six commenters objected to the FAA's decision not to publish the specifics of employment and training standards for security purposes. The Independent Union of Flight Attendants (IUFA), Association of Flight Attendants (AFA), Airline Passengers Association of North America (APANA). Public Citizen/ Aviation Consumer Action Project (ACAP), Families of Pan-Am 103/Lockerbie, and an individual argued that these standards should be subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (APA).

While agreeing that Congress gave the FAA authority under the FA Act to restrict public disclosure of information obtained or developed in the conduct of security activities, commenters stated that the Freedom of Information Act does not exempt the development of minimum security employment standards from the requirements of the APA. Commenters felt that such standards as training curricula and hours do not pose a security threat and that by omitting these specifics from the NPRM, the FAA denied the public an opportunity to comment fully on matters affecting public safety. Families of Pan-Am 103/ Lockerbie recommended, at an absolute minimum, that the following areas be included in the rule: minimum physical standards, criminal history standards, mental and educational standards, hours of training, and screening standards.

Some commenters recommended that the FAA either withdraw the NPRM and issue another proposed rule, or issue a supplemental NPRM, either of which should set forth sufficient minimum standards to allow for full public comment on employment and training standards. These commenters, as well as airport operators, provided similar comments about the lack of specifics in various sections of the proposed rule; these comments are discussed within each applicable section.

Response: The FAA disagrees with the commenters who expressed the opinion that APA notice and comment requirements were not complied with because some details of specific security program standards were not disclosed in the proposed rule. Very few requirements were withheld from public disclosure. Those few areas withheld were of a security-sensitive nature or involve individualized details of specific security programs. With few exceptions, the content, scope, and associated costs for every aspect of this rulemaking were disclosed in the NPRM for notice and comment purposes.

In the part 107 portion of the NPRM, for example, a full definition of the security identification display area and the content of the training curriculum and recordkeeping requirements were fully disclosed for public review and comment. Likewise, the duties of an ASC were set out in the NPRM.

In the part 108 portion of the NPRM, a significant amount of detailed information regarding security screener qualifications was disclosed for public notice and comment. The fundamental aptitudes and physical abilities for screeners were enunciated and discussed in both the preamble and rule language itself. The standards for security oversight were also fully detailed in the proposed rule, including the scope and content of security knowledge required of security personnel, the frequency of security evaluations, and the applicability of these standards to contractor personnel.

Thus, the FAA does not agree with commenters who stated that there was insufficient disclosure of details of the proposed security standards in the NPRM. In all instances, either the details were fully disclosed or withheld for legitimate security reasons.

effective and is currently used by some U.S. air carriers, foreign governments, and airport authorities to test, document, and evaluate security delivery systems.

Another commenter stated that the proposed rule will add costly traIning and reporting requirements into a system that is already overtaxed; the commenter suggested that resources would be better spent on developing more sophisticated intelligence gathering methods and equipment.

One commenter, while supporting the proposed rule, felt that the comment period allowed for this NPRM was too brief and that it should be adjusted. ATA recommended that the proposed requirements be made applicable to the U.S. operations of foreign air carriers; this would enhance the safety of the large number of U.S citizens who fly internationally on foreign-flag airlines.

Finally, Families of Pan-Am 103/Lockerbie said that the public has lost confidence in the FAA's aviation security system and does not trust the FAA to effectively establish and enforce security standards.

Response: Regarding the first comment about the appropriateness of standards for small airports, it is the FAA's long held position that security standards are necessary for all airports to ensure the public safety. A security problem originating at one airport may also affect other airports by the very nature of the transportation system. However these standards are designed to be flexible and geared to the particularities of each airport. Therefore, the costs of complying with these standards are expected to be in proportion to the size and scope of the operations at each airport and should not adversely affect other airport functions.

Regarding the concern about employee retention, the FAA has long held that employee retention, notably in screening operations, is desirable. However, there is no evidence to support the proposition that the imposition of fines on employers with high turnover rates would result in increased employee retention or better qualified employees. Retention rates may improve as a result of this rulemaking since it establishes comprehensive employment and training standards.

The use of computerized security training equipment is an area of development that has potential. However, until further research and evaluations are completed, it would be premature to impose a requirement on airport operators and air carriers to use computerized security training equipment at this time. Of course, airport operators and air carriers may elect to use computerized systems if the FAA determines the systems are effective in meeting security-related responsibilities.

The FAA recognizes that an effective civil aviation security system can be expensive. However, the current security requirements are absolutely essential to counter the current level and sophistication of threats to civil aviation.

Regarding the length of the comment period, the FAA agrees that the time frame was brief. The FAA usually provides a longer comment period; however, in this case, the FAA was constrained by the congressional mandate of the Aviation Security Improvement Act.

Concerning ATA's comment about applicability of the requirements to U.S. operations of foreign air carriers the FAA issued a final rule on July 1, 1991, amending part 129, to require that the security programs of foreign air carriers provide a level of protection similar to U.S. air carriers (56 FR 30122). This action was taken in response to section 105(a)(k)(2) of the Aviation Security Improvement Act. The FAA is evaluating changes that may be necessary to these foreign air carrier security programs to provide a similar level of protection.

Finally, the FAA is fully aware of the position taken by the Families of Pan-Am 103/Lockerbie. The FAA also appreciates the unique perspective that this organization brings to the security arena. The agency seeks to assure the Families of Pan-Am 103/Lockerbie, as well as all other interested parties, that the FAA has moved on several fronts to strengthen the aviation security system. The FAA has worked with the Congress and a number of groups (e.g., President's Commission on Aviation Security

In addition to the changes made in response to the commenters and noted previously, minor editorial changes to the rule have been made for the sake of clarity.

Paperwork Reduction Act

Information collection requirements in the amendments to parts 107 and 108 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0554.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, when practical, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all ''major'' rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that meets one of the following criteria if it: has an annual effect on ithe economy of $100 million or more; causes a major increase in consumer costs; has a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not ''major'' as defined in the executive order, therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act (P.L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Cost

Commenters on the cost of the rule focused on the training cost of persons with unescorted access to security identification display areas (SIDAs). The commenters primarily wanted more detail on the curriculum and hours requirement of the training. The specific content of the training will vary from airport to airport. Hence, the contents of this training will be spelled out in each airport security plan. However, the length of training will be only 2 hours or less.

The rule will improve airport security, but it will also impose additional costs on airport operators and on airlines. Tables I.a and 1.b outline the changes, the type of costs associated with that change, and the estimated costs. All costs are presented in 1990 dollars and are discounted using a 10 percent discount rate.

Table 1.a
Changes in FAR Part 107 ''Airport Security''

Section	*Rule*	*Annualized Costs*
107.7	Will require reporting changes in security liaison personnel.	No incremental costs.

		of $22,400.

Table 1.b
Changes in FAR Part 108 "Airplane Operator Security"

Section	*Rule*	*Annualized Costs*
108.9	Will require airlines to staff checkpoints in accordance with their security programs. (Changes in ACSSP imply additional security checkpoint staffing.)	Additional checkpoint staffing will cost $1.2 million.
108.17	Will require carriers to comply with x-ray operator duty time limitations.	No incremental costs. This codifies existing policy.
108.29	Will require that air carriers assign a person as the principal ground security coordinator to have security oversight functions including daily reviews of security functions.	Administrative costs related to evaluations equal $134,000.
108.31	Will require hiring, training and testing of security personnel to a standard outlined in their ACSSP.	This mostly codifies existing practices. However the administrative cost related to assuring that personnel meet standards and enhanced remedial training costs are $61,800.

The rule will impose discounted costs of approximately $37.7 million over the period 1992 through 2001; the annualized costs will be approximately $5.9 million. About $4.5 million in annualized costs result from enhanced training requirements for personnel authorized for unescorted access to SIDA's. Approximately $1.2 million in costs come from enhanced checkpoint staffing requirements at small airports. In addition, the amendment will impose $218,000 in administrative and other costs on airports and air carriers.

Benefits

The primary benefit from this rule is a reduced risk of terrorist incidents and other criminal acts against civil aviation within the U.S. Although this regulation affects U.S. airports, benefit estimates are based on the potential for terrorist activity throughout the world. Terrorist activity ranges from an inflight bombing that destroys an aircraft to a hijacking.

Table 2
Terrorist Bombings Aboard Civil Aircraft 1986/1989

Date	*Airline*	*Killed*	*Injured*
04/02/86	TWA	4	9
05/03/86	Air Lanka	16	41
10/26/86	Thai Airways	0	62
03/01/88	BOP Air (S. Africa)	17	0
12/21/88	Pan Am	270	0
09/19/89	UTA	171	0
11/27/89	Avianca	107	0
	Total	585	112

Table 3
Estimated Benefits from Prevention of Terrorist Act

Aircraft Type	*Boeing 727*	*DC10*
Capacity	148.8	275.4
Load Factor	61.4	68.5
Passengers	91	189
Value of Avoided Fatalities	$137,044,800	$282,973,500
Value of Aircraft	$5,994,310	$23,711,670
Total Value	$143,039,110	$306,685,170
Annualized Value	$14,303,900	$30,668,600
Discounted Value	$92,181,216	$197,642,532

Table 3 presents a range of the potential benefits from avoiding just one terrorist incident during the next 10 years. The destruction of a Boeing 727 could result in a death toll of 91 persons. The estimated benefits of avoiding these deaths are $137 million. The replacement value of a Boeing 727 in 1990 dollars is approximately $6 million. The present value of such a disaster is valued at $92 million with an annualized value of $14 million over the period 1992 through 2001. On the other end of the scale, the loss of a DC10 could cause the loss of 189 lives and aircraft damage of $24 million. The discounted value of preventing such an incident is $198 million with an annualized value is $30.7 million.

Historically, a domestic hijacking that detours an airplane from its scheduled route but results in no aircraft damage or injuries has an estimated annualized benefit that ranges from $27,000 to $54,000.

Table 4
Benefit Cost Comparison

Category	*Annualized Value*	*Ten Year Discounted Value*
Cost	*$5,852,000*	*$37,655,000*
Low Benefit	*$14,303,000*	*$92,181,000*
Low Net Benefits	*$8,451,000*	*$54,526,000*
High Benefit	*$30,668,000*	*$197,600,000*
High Net Benefits	*$24,816,000*	*$159,945,000*

Benefit-Cost Comparison

A comparison of potential benefits and costs of the rule is presented in Table 4. On the low side, the potential discounted net benefit from the amendment could be $55 million ($8.5 million annualized net benefit); on the high side, discounted net benefit could be $160 million ($24.8 million annualized net benefit). The benefit that may be derived from the added deterrence of a potential hijacking is not specifically included in these estimates. Prevention of hijacking simply strengthens the argument about rule benefits.

The FAA, therefore, has determined that it is reasonable to expect the potential benefits of the rule to exceed its costs.

FAA criteria sets a "substantial number" as not less than 11 and more than one-third of the small entities subject to the rule. About 220 small airports will be affected by this rule. The affected small airports are those operated by towns, cities, or counties whose populations are each less than 50,000 according to the FAA Regulatory Flexibility Criteria and Guidance. This Criteria defines a threshold value for "a significant economic impact" as $6,950 in 1990 dollars.

Of the 220 airports which qualify as small entities, none incur costs that exceed the threshold. These airports will experience some additional costs resulting from requirements for training personnel having unescorted access to airport secure areas. The estimated costs for these airports range from about $100 to $2,000 a year with a median value of $150. These costs are the result of increased security training and administrative requirements. (Costs to airports come from §§ 107.25, 107.29, and 108.29).

Air carriers also will incur some additional costs as a result of the rule. The threshold size for air carriers is nine aircraft operated by the certificate holder; and the cost threshold ranges from $51,000, for scheduled operators of aircraft for hire with at least one airplane having fewer than 60 seats, to $107,900, for operators where the entire fleet has a seating capacity of over 60.

Additional costs to small entities in these two groups will result from the hiring additional checkpoint supervisors. Since these small entities operate only nine aircraft or fewer, they seldom have checkpoints at more than one or two airport and administrative costs will be small. The annual cost of staffing two airport checkpoints with a supervisor for 4 hours a day, 5 days per week will be approximately $24,000. (Costs to airlines will come from §§ 107.25, 107.29, and 108.31). Therefore, the additional cost will not exceed one-half the threshold for part 135 operators or one-fourth the threshold for part 121 operators. Hence, the rule will not have a significant economic impact on a substantial number of part 121 and part 135 small entities.

Hence, the FAA certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of substantial public and congressional interest in the enhancement of aviation security. A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Parts 107 and 108 of the Federal Aviation Regulations (14 CFR Parts 107 and 108) effective September 19, 1991.

The authority citation for Part 107 is revised to read as follows, and all other authority citations in this part have been removed:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g); Sec. 101, et seq., Pub. L. 101–604, 104 Stat. 3066.

(2) The operation of each airport regularly serving scheduled passenger operations of a foreign air carrier required to have a security program by § 129.25 of this chapter; and

(3) Each person who is in or entering a sterile area on an airport described in paragraph (a)(1) or (a)(2) of this section.

(b) For purposes of this part—

(1) "Airport Operator" means a person who operates an airport regularly serving scheduled passenger operations of a certificate holder or a foreign air carrier required to have a security program by § 108.5(a) or § 129.25 of this chapter;

(2) "Air Operations Area" means a portion of an airport designed and used for landing, taking off, or surface maneuvering of airplanes;

(3) "Exclusive area" means that part of an air operations area for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25;

(4) "Law enforcement officer" means an individual who meets the requirements of § 107.17; and

(5) "Sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved security program or a security program used in accordance with § 129.25.

(Amdt. 107–1, Eff. 9/11/81)

operator has delegated authority in this matter;

(3) Includes the items listed in paragraph (b), (f), or (g) of this section, as appropriate; and

(4) Has been approved by the Director of Civil Aviation Security.

(b) For each airport subject to this part regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this section of this chapter) of more than 60 seats, the security program required by paragraph (a) of this section must include at least the following:

(1) A description of each air operations area, including its dimensions, boundaries, and pertinent features.

(2) A description of each area on, or adjacent to, the airport which affects the security of any air operations area.

(3) A description of each exclusive area, including its dimensions, boundaries, and pertinent features, and the terms of the agreement establishing the area.

(4) The procedures, and a description of the facilities and equipment, used to perform the control functions specified in § 107.13(a) by the airport operator and by each air carrier having security responsibility over an exclusive area.

(5) The procedures each air carrier having security responsibility over an exclusive area will use to notify the airport operator when the procedures, facilities, and equipment it uses are not adequate to perform the control functions described in § 107.13(a).

(6) A description of the alternate security procedures, if any, that the airport operator

in the security program as an appendix any document which contains the information required by paragraph (b), (f), or (g) of this section.

(d) Each airport operator shall maintain at least one complete copy of its approved security program at its principal operations office, and shall make it available for inspection upon the request of any Civil Aviation Security Special Agent.

(e) Each airport operator shall restrict the distribution, disclosure, and availability of information contained in the security program to those persons with an operational need-to-know and shall refer requests for such information by other than those persons to the Director of Civil Aviation Security of the FAA.

(f) For each airport subject to this part regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 30 but less than 61 seats, the security program required by paragraph (a) of this section must include at least the following:

(1) A description of the law enforcement support necessary to comply with § 107.15(b), and the procedures which the airport operator has arranged to be used by the certificate holder or foreign air carrier to summon that support.

(2) A description of the training program for law enforcement officers required by § 107.17.

(3) A description of the system for maintaining the records described in § 107.23.

(g) For each airport subject to this part where the certificate holder or foreign air carrier is required to conduct passenger screening under a security program required by § 108.5(a) (2) or (3) or § 129.25(b) (2) or (3) of this chapter, or conducts screening under a security program being carried out pursuant to § 108.5(b), as appropriate, the security program required by paragraph (a) of this section must include the following:

(1) A description of the law enforcement support necessary to comply with § 107.15.

(2) A description of the training program for law enforcement officers required by § 107.17.

gram for an airport subject to this part shall submit the proposed program to the Director of Civil Aviation Security at least 90 days before any scheduled passenger operations are expected to begin by any certificate holder or permit holder to whom § 121.538 or § 129.25 of this chapter applies.

(b) Within 30 days after receipt of a proposed security program, the Director of Civil Aviation Security either approves the program or gives the airport operator written notice to modify the program to make it conform to the applicable requirements of this part.

(c) After receipt of a notice to modify, the airport operator may either submit a modified security program or petition the Administrator to reconsider the notice to modify. A petition for reconsideration must be filed with the Director of Civil Aviation Security.

(d) Upon receipt of a petition for reconsideration, the Director of Civil Aviation Security reconsiders the notice to modify and either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Director of Civil Aviation Security to withdraw or amend the notice to modify, or by affirming the notice to modify.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.7 Changed conditions affecting security.

(a) After approval of the security program, the airport operator shall follow the procedures prescribed in paragraph (b) of this section whenever it determines that any of the following changed conditions has occurred:

(1) Any description of an airport area set out in the security program in accordance with § 107.3(b) (1), (2), or (3) is no longer accurate.

(2) The procedures included, and the facilities and equipment described, in the security program in accordance with § 107.3(b) (4) and (5) are

port Security Coordinator (ASC) required under § 107.29.

(b) Whenever a changed condition described in paragraph (a) of this section occurs, the airport operator shall—

(1) Immediately notify the FAA security office having jurisdiction over the airport of the changed condition, and identify each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved; and

(2) Within 30 days after notifying the FAA in accordance with paragraph (b)(1) of this section, submit for approval in accordance with § 107.9 an amendment to the security program to bring it into compliance with this part.

(Amdt. 107–1, Eff. 9/11/81); (Amdt. 107–6, Eff. 9/19/91)

§ 107.9 Amendment of security program by airport operator.

(a) An airport operator requesting approval of a proposed amendment to the security program shall submit the request to the Director of Civil Aviation Security. Unless a shorter period is allowed by the Director of Civil Aviation Security, the request must be submitted at least 30 days before the proposed effective date.

(b) Within 15 days after receipt of a proposed amendment, the Director of Civil Aviation Security issues to the airport operator, in writing, either an approval or a denial of the request.

(c) An amendment to a security program is approved if the Director of Civil Aviation Security determines that—

(1) Safety and the public interest will allow it, and

(2) The proposed amendment provides the level of security required by § 107.3.

(d) After denial of a request for an amendment, the airport operator may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the Director of Civil Aviation Security. Except in an emergency, a petition for reconsideration stays the denial until the Administrator takes final action on the petition.

(e) Upon receipt of a petition for reconsideration, the Director of Civil Aviation Security reconsiders the amendment and either affirms or directs the Director of Civil Aviation Security to approve the proposed amendment or affirming the denial.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.11 Amendment of security program by FAA.

(a) The Administrator or Director of Civil Aviation Security may amend an approved security program for an airport, if it is determined that safety and the public interest require the amendment.

(b) Except in an emergency as provided in paragraph (f) of this section, when the Administrator or the Director of Civil Aviation Security proposes to amend a security program, a notice of the proposed amendment is issued to the airport operator, in writing, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment. After considering all relevant material, including that submitted by the airport operator, the Administrator or the Director of Civil Aviation Security either rescinds the notice or notifies the airport operator in writing of any amendment adopted, specifying an effective date not less than 30 days after receipt of the notice of amendment by the airport operator.

(c) After receipt of a notice of amendment from a Director of Civil Aviation Security, the airport operator may petition the Administrator to reconsider the amendment. A petition for reconsideration must be filed with the Director of Civil Aviation Security. Except in an emergency as provided in paragraph (f) of this section, a petition for reconsideration stays the amendment until the Administrator takes final action on the petition.

(d) Upon receipt of a petition for reconsideration, the Director of Civil Aviation Security reconsiders the amendment and either rescinds or modifies the amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by direct-

case, the Administrator or the Director of Civil Aviation Security incorporates in the notice of the amendment the finding, including a brief statement of the reasons for the emergency and the need for emergency action.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.13 Security of air operations area.

(a) Except as provided in paragraph (b) of this section, each operator of an airport serving scheduled passenger operations where the certificate holder or foreign air carrier is required to conduct passenger screening under a program required by § 108.5(a)(1) or § 129.25(b)(1) of this chapter as appropriate shall use the procedures included, and the facilities and equipment described, in its approved security program, to perform the following control functions:

(1) Controlling access to each air operations area, including methods for preventing the entry of unauthorized persons and ground vehicles.

(2) Controlling movement of persons and ground vehicles within each air operations area, including, when appropriate, requirements for the display of identification.

(3) Promptly detecting and taking action to control each penetration, or attempted penetration, of an air operations area by a person whose entry is not authorized in accordance with the security program.

(b) An airport operator need not comply with paragraph (a) of this section with respect to an air carrier's exclusive area, if the airport operator's security program contains—

(1) Procedures, and a description of the facilities and equipment, used by the air carrier to perform the control functions described in paragraph (a) of this section; and

(2) Procedures by which the air carrier will notify the airport operator when its procedures, facilities, and equipment are not adequate to perform the control functions described in paragraph (a) of this section.

60 seats shall submit to the Director of Civil Aviation Security, for approval and inclusion in its approved security program, an amendment to provide for a system, method, or procedure which meets the requirements specified in this paragraph for controlling access to secured areas of the airport. The system, method, or procedure shall ensure that only those persons authorized to have access to secured areas by the airport operator's security program are able to obtain that access and shall specifically provide a means to ensure that such access is denied immediately at the access point or points to individuals whose authority to have access changes. The system, method, or procedure shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. The system, method, or procedure shall be capable of limiting an individual's access by time and date.

(b) The Director of Civil Aviation Security will approve an amendment to an airport operator's security program that provides for the use of an alternative system, method, or procedure if, in the Director's judgment, the alternative would provide an overall level of security equal to that which would be provided by the system, method, or procedure described in paragraph (a) of this section.

(c) Each airport operator shall submit the amendment to its approved security program required by paragraph (a) or (b) of this section according to the following schedule:

(1) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where at least 25 million persons are screened annually or airports that have been designated by the Director of Civil Aviation Security. The amendment shall specify that the system, method, or procedure must be fully operational within 18 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(3) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where at least 500,000 but not more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(4) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where less than 500,000 persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(d) Notwithstanding paragraph (c) of this section, an airport operator of a newly constructed airport commencing initial operation after December 31, 1990, as an airport subject to paragraph (a) of this section, shall include as part of its original airport security program to be submitted to the FAA for approval a fully operational system, method, or procedure in accordance with this section.

Docket No. 25568 (54 FR 588, 1/6/89) (Amdt. 107–4, Eff. 2/8/89)

§ 107.15 Law enforcement support.

(a) Each airport operator shall provide law enforcement officers in the number and in a manner adequate to support—

(1) Its security program; and

(2) Each passenger screening system required by part 108 or § 129.25 of this chapter.

(b) For scheduled or public charter passenger operations with airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 30 but less than 61 seats for which a passenger screening system is not required, each airport operator shall ensure that law enforcement response by, any person as a required law enforcement officer unless, while on duty on the airport, the officer—

(1) Has the arrest authority described in paragraph (b) of this section;

(2) Is readily identifiable by uniform and displays or carries a badge or other indicia of authority;

(3) Is armed with a firearm and authorized to use it; and

(4) Has completed a training program that meets the requirements in paragraph (c) of this section.

(b) The law enforcement officer must, while on duty on the airport, have the authority to arrest, with or without a warrant, for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located:

(1) A crime committed in the officer's presence.

(2) A felony, when the officer has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must provide training in the subjects specified in paragraph (d) of this section and either—

(1) Meet the training standards, if any, prescribed by either the State or the local jurisdiction in which the airport is located, for law enforcement officers performing comparable functions; or

(2) If the State and local jurisdictions in which the airport is located do not prescribe training standards for officers performing comparable functions, be acceptable to the Administrator.

(d) The training program required by paragraph (a)(4) of this section must include training in—

(1) The use of firearms;

(2) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(3) The responsibilities of a law enforcement officer under the airport operator's approved security program; and

operator may request that the Administrator authorize it to use Federal law enforcement officers.

(b) Each request of the use of Federal law enforcement officers must be accompanied by the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence and aircraft piracy at the airport and to the air carrier aircraft operations at the airport.

(3) A copy of that portion of the airport operator's security program which describes the law enforcement support necessary to comply with § 107.15.

(4) The availability of State, local, and private law enforcement officers who meet the requirements of § 107.17, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal law enforcement officers needed to supplement available State, local, and private law enforcement officers and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal law enforcement officers.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of law enforcement officers employed by the FAA or by any other Federal agency, with the consent of the head of that agency.

§ 107.20 Submission to screening.

No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures

ary, or deadly or dangerous weapon on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area; and

(2) When entering or in a sterile area.

(b) The provisions of this section with respect to firearms do not apply to the following:

(1) Law enforcement officers required to carry a firearm by this part while on duty on the airport.

(2) Persons authorized to carry a firearm in accordance with § 108.11 or § 129.27.

(3) Persons authorized to carry a firearm in a sterile area under an approved security program or a security program used in accordance with § 129.25.

(Amdt. 107–3, Eff. 1/10/86)

§ 107.23 Records.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part;

(2) The record is maintained for a minimum of 90 days; and

(3) It is made available to the Administrator upon request.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of firearms, explosives, and incendiaries discovered during any passenger screening process, and the method of detection of each.

(2) The number of acts and attempted acts of air piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual bombings on the airport.

(4) The number of detentions and arrests, and the immediate disposition of each person detained or arrested.

(Amdt. 107–3, Eff. 1/10/86)

rity identification display area unless the person has successfully completed training in accordance with an FAA-approved curriculum specified in the security program.

(c) By October 1, 1992, not less than 50 percent of all individuals possessing airport-issued identification that provides unescorted access to any security identification display area at that airport shall have been trained in accordance with an FAA-approved curriculum specified in the secruity program.

(d) After May 1, 1993, an airport operator may not permit any person to possess any airport-issued identification medium that provides unescorted access to any security identification display area at that airport unless the person has sucessfully completed FAA-approved training in accordance with a curriculum specified in the security program.

(e) The curriculum specified in the security program shall detail the methods of instruction, provide attendees the opportunity to ask questions, and include at least the following topics:

(1) Control, use, and display of airport-approved identification or access media;

(2) Challenge procedures and the law enforcement response which supports the challenge procedure;

(3) Restrictions on divulging information concerning an act of unlawful interference with civil aviation if such information is likely to jeop-

access to any security identification display area to gain such access unless that medium was issued to that person by the appropriate airport authority or other entity whose identification is approved by the airport operator.

(g) The airport operator shall maintain a record of all training given to each person under this section until 180 days after the termination of that person's unescorted access privileges.

(Amdt. 107–6, Eff. 9/19/91)

§ 107.27 Evidence of compliance.

On request of the Assistant Administrator for Civil Aviation Security, each airport operator shall provide evidence of compliance with this part and its approved security program.

(Amdt. 107–6, Eff. 9/19/91)

§ 107.29 Airport Security Coordinator.

Each airport operator shall designate an Airport Security Coordinator (ASC) in its security program. The designation shall include the name of the ASC, and a description of the means by which to contact the ASC on a 24-hour basis. The ASC shall serve as the airport operator's primary contact for security-related activities and communications with FAA, as set forth in the security program.

(Amdt. 107–6, Eff. 9/19/91)

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